

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

Case No. CGRF(NZ)/92/2016

Applicant : M/s Ankur Seeds Private Limited
Plot No.27, New Cotton Market,
Opp.Bus Stand, Nagpur-18.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(D/F.) NUC,MSEDCL,
NAGPUR.

Applicant :- In person.

Respondent by 1) Shri Dhobale, EE(Adm), NUC,Nagpur
2) Shri R.G. Khadatkar, Dy.EE.,NUC, Nagpur.
3) Shri S.N.Kene, Dy.Law Officer, N.Z., Nagpur.

Quorum Present : 1) Shri Shivajirao S. Patil,
Chairman.

2) Shri N.V.Bansod
Member

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

ORDER PASSED ON 10-08-2016

1. The applicant filed present grievance application before this Forum on 28.06.2016 under Regulation 6.5 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).

2. Applicant's case in brief is that, applicant is HT-IC category consumer

having electrical connection at Neri (Mankar) under MSEDCL Hingna Sub-division. H.T. connection was released to the applicant as an extension of load from LT to HT with connected load 625 KVA having Contract Demand of 450 KVA on 19.05.2008. The purpose of this HT connection was for Biotech Research Laboratory. The same was mentioned in A-1 form. MSEDCL while releasing the load sanctioned order and also accepted the same and clearly mentioned purpose as Biotech Research Laboratory. The applicant has developed research and development unit containing Tissue culture Laboratories, Green Houses, Poly Houses and some other allied Biotech Research Laboratories through which purely research, development and High Tech crop cultivation activities is carried out. Applicant is using electricity for agricultural purpose at his research and development unit exclusively for the betterment of the farmers houses. The Venture i.e. Biotech Research Laboratory has the potential to transform the lives of the people in the State impacting hugely on agriculture. It's major objective is to provide to the farmers of the state better high-yielding drought and Pest resistant crops suited to Agro Climatic Conditions of the state. The applicant's claim for change of category to HT-V-Agriculture is in-line with Maharashtra Biotechnology policy. It is further submitted that respondent had been issuing bill for consumption of energy against these connections categorized the tariff as HT-IC. Respondent has applied in the state there is to the applicant and respondent failed to decide suitable tariff category for applicant's connection. MSEDCL had reconnected applicability of agricultural category tariff to all consumers engaged in Hi-Tech Agricultural activities.

3. It is further submitted that applicant has requested the respondent to

change tariff category HT-IC to HT-V : HT Agriculture for electric connection as per letter dt. 14.05.2015. Respondent has neither change tariff category nor communicated any decision. Applicant send a letter dt. 03.03.2016 to the respondent for necessary action. Respondent as per letter dt. 05.03.2015 informed that regarding non acceptance of applicant's contention for change the tariff category and further suggested to submit the representation to prove purpose of power supply. Applicant submitted representation on 19.03.2016.

4. It is further submitted that respondent informed the applicant as per letter dt. 28.03.2016 regarding non acceptance of applicants contention for changing the tariff category and further informed that existing tariff category HT-IC (HT Industrial Express Feeder) will be changed to HT-II (HT-Commercial Express Feeder) w.e.f. 01.08.2012 as per MERC Tariff Order dt. 16.08.2012. Applicant approached to IGRC on 02.05.2016 and filed grievance application vide case No. 5/16.

5. Dy. Law Officer, MSEDCL, N.Z.,Nagpur issued disconnection notices No.2884 & 2887/8 dt. 22.06.2016 which received to the applicant on 24.06.2016,. Calling upon the applicant to pay amount of Rs. 1,44,84,190/- as difference amount for the period 01.08.2012 to 31.03.2016 as per supplementary bill as bill of the applicant for the month of April,2016 and May,2016 is generated with tariff category HT-II-E (HT Commercial Express Feeder).

6. Therefore, applicant filed the present grievance application under Regulation 6.5 read with Regulation 8.3 was said Regulation and claim the relief namely :

A) To direct respondent for not taking coercive measures during pendency of

present disputes.

- B) To quash both disconnection notices No. SE/O&M/NUC/HT/Accts/2884 & 2887/8 dt. 22.06.2016 for amount of Rs. 1,44,84,190/- issued by respondent and it be declare as illegal.
- C) Direct the respondent to pay Rs. 1,00,000/- compensation to the applicant for mental & physical agony.
- D) To direct respondent to pay Rs. 10000/- as cost of the application.
- E) To quash supplementary bill dt. 25.04.2016.
- F) To direct respondent to change category for applicant from existing HT-IC to HT-V : HT-Agriculture.
- G) To implement change of tariff from the date of implementation i.e. from 01.08.2009.
- H) To refund excess amount charged by way of difference in tariff between HT-IC and HT-V w.e.f. 01.08.2009.
- I) To direct respondent to pay compensation to the applicant as per S.O.P.

7. Respondent denied the applicant's case by filing a reply dt. 30.06.2016. It is submitted that Applicant is having HT connection at 11KV level connected since 19.05.2008 under Hingna Sub-division. Applicant is connected on 11KV Express Feeder and was billed with tariff from HT-IC (HT Industrial Express Feeder) since the date of connection i.e. 19.05.2008 till March,2016. The applicant applied to the respondent as per letter dt. 14.05.2015 for change of tariff from HT-IC (HT Industrial Express Feeder to HT-V : HT Agriculture stating that they are engaged in activity like Tissue culture, Greed Houses and other Hi-Tech Process. Inspection of unit of the applicant is carried out by

Dy.Executive Engineer, Hingna on 26.05.2015. As per Inspection Report the electric supply used for research activities and main usage is Hi-tech agriculture research work. District Superintending Agricultural Officer as per letter dt. 30.07.2015 also confirmed about the predominant use is for research and development work.

8. It is further submitted that applicant while availing electric connection in their A-1 application for HT connection dt. 08.05.2006 have mentioned purpose as Biotech Research Laboratory, however no certificate regarding their unit covered under Biotech policy of Government of Maharashtra was enforced. Also at the time of enhancement of the load in demand of June,2010 the purpose was mentioned as Laboratory for research in Bio-Technology.

9. It is submitted that as per MERC Tariff Order dt. 17.08.2009, 16.08.2012 and 26.06.2015, HT-V : HT Agriculture is applicable for "for Hi-Tech Agriculture (i.e. Tissue culture, Green Houses, Mushroom activities), provided the power supplies exclusively utilized by such Hi-Tech Agriculture consumers for purpose directly concern with crop cultivation process and further provided that the power is not utilized for any Engineering or Industrial process. Therefore, the matter was referred to Chief Engineer(Commercial). Chief Engineer (Commercial) directed to verify the purpose as per MERC provision in applicant's premises and apply tariff as per predominant use of power supply.

10. Therefore a team was formed to inspect the consumers premises which inspected the premises on 06.01.2016. As per their observation it is confirm that in various laboratories in the applicant premises including Tissue culture

Laboratory Hi-Tech Research and Development activities are carried on the seeds of various agriculture products to develop high yielding and disease resistant variety of seeds. These seeds are then planted in the green houses for testing the results. The mass scale cultivation/processing of seeds are carried out in the said premises and then seeds are sold by the Company.

11. As per MERC Tariff Order dt. 16.08.2012 and 26.06.2015 the Research and Development units situated outside Industrial premises are categorized as per HT-II (HT Commercial) tariff category. Legal Adviser, N.Z., Nagpur on dt. 08.02.2016 also opined the same.

12. MSEDCL informed to the applicant as per letter dt. 05.03.2016 about non acceptance of their request for change in tariff HT-IC (HT Industrial Feeder) to HT-V : HT Agriculture and requested to submit their representation to prove their purpose of power supply otherwise existing tariff category HT-IC (HT Industrial Express Feeder) will be changed to HT-II (HT Commercial Express Feeder to the above HT Connection w.e.f. 01.08.2012 as per the MERC Tariff Order dt. 16.08.2012). Applicant vide letter dt.19.03.2016 did not submit satisfactory evidence or documents regarding use of power supply other than Research and Development in their premises. Therefore, MSEDCL intimate the applicant as per letter dt. 28.03.2016 regarding change in their existing tariff category, HT-IC (HT Industrial Express Feeder) to HT-II (HT Commercial) with Express Feeder w.e.f. 01.08.2012. Accordingly bill of the applicant for the month of April,16 and May,16 is generated with tariff category HT-II-E (HT Commercial Express Feeder and supplementary bill dt. 25.04.2016

is raised for amount of Rs. 1,44,84,190/- as this amount for the period 01.08.2012 to 31.03.2016.

13. Applicant submitted grievance to IGRC on 02.05.2016 and it was discussed as per order dt. 13.06.2016. The disconnection notice served with consumer as per outward No. 2887/8 dt. 22.06.2016 is due to part payment by applicant of the bill generated for the month of May,2016. The bill of the applicant for the month of May,2016 is generated of the amount of Rs.10,33,320/- wherein applicant made part payment of Rs.5,68,885/-. Therefore disconnection notice is served with consumer for balance amount of Rs. 4,73,555/-. In the light of the above MSEDCL has served disconnection notice appearing No.2884, dt. 22.06.2016 to the applicant for non- payment of amount Rs.1,44,84,190/- as it the amount for the period from 01.08.2012 to 31.03.2016 and it is correct as per MERC Tariff Order dt. 16.08.2012 and according to purpose of use of supply by the applicant. Supplementary bill issued by MSEDCL is legal and proper.

14. It is submitted that Industrial Tariff to the consumer is not correct as per MERC Orders. Agricultural tariff cannot be applicable as there is no direct crop is produced in applicant's premises as per MERC Tariff Order i.e. 17.08.2009, 16.08.2012 and 26.06.2015. Applicant is planting seeds in the green houses in applicants premises for testing the results for research and development in seeds. The mass scale cultivation / processing of seeds are carried outside the said premises and seeds are sold by the company. The use of power supply in applicant's premises is for research and development only. This is observed during inspection of authority of MSEDCL and also proved

from the documents submitted by the applicant. As per MERC Tariff Order dt. 16.08.2012 “**HT-II (HT Commercial) tariff category, clause No.(n) – Research and Development Units situated outside Industrial premises**” are to be categorized as per HT-II (HT Commercial) tariff category. Therefore change in applicants existing tariff category HT-IC (HT Industrial Express Feeder) to HT-II (HT Commercial Express Feeder) April,2016 w.e.f. 01.08.2012 is legal and correct. There is no force and no substance in grievance application and an application deserves to be dismissed.

15. Forum heard arguments of both the parties and perused record.

16. There is difference of opinion amongst all 3 members of Forum. Therefore judgement is passed on majority view of Hon’ble Chairman and Hon’ble Member/Secretary of the Forum, Whereas dissenting note of Hon’ble Member (CPO) is noted in the judgement and it is part and partial of the Judgement.

Reasoning of majority view of Hon’ble Chairperson and Hon’ble Member/Secretary of the Forum.

17. We have scrupulously and meticulously scanned entire record and perused number of documents produced by both the parties. It is evident from the record that applicant is connected on 11KV Express Feeder and was billed with tariff from HT-IC (H.T. Industrial Express Feeder since) the date of connection 19.05.2008 till March,2016. It is pertinent to note that since the date of connection dt. 19.05.2008 applicant was silent and did nothing for a period of about 7 years and thereafter surprisingly all of a sudden applicant sent a letter dt. 14.05.2015 to the non applicant for change in tariff from HT-IC (HT Industrial Express Feeder) to HT-V : H.T. Agriculture alleging that applicant is engaged in activities like Tissue culture, green

houses and other Hi-Tech process. Annexure-A alongwith reply of the non applicant is first application of the applicant dt. 14.05.2015. It is a matter of record that inspection of unit of the applicant is carried out by Dy.E.E., Hingna on 26.05.2015 and it was found that electric supply is used for research activities and main usage is Hi-Tech Agriculture Research Work. It is also matter of record that District Superintendent Agriculture Officer confirmed about predominant use is for research and development work as per letter dt. 30.07.2015 which is filed alongwith reply of non applicant as Annexure-C.

18. It is pertinent to note that the applicant have while availing electric connection i.e. in their A-1 application for H.T. Connection dt. 08.05.2006 have mentioned purpose as **Bio-Tech Research Laboratory**. Copy of said A-1 application of the applicant dt. 08.05.2006 as at Annexure-D with reply of non applicant. However no certificate regarding their unit covered under Bio-Tech policy of Govt. of Maharashtra/India was enclosed. Subsequently at the time of enhancement of load in the month of June,2010 the purpose was mentioned as **Laboratory for research in Bio-Technology**. Annexure-E is application of applicant for enhancement of the load which is filed alongwith reply of non applicant.

19. It is noteworthy that as per MERC Tariff Order dt. 17.08.2009, 16.08.2012, 26.06.2015, HT-V : HT Agriculture tariff is applicable for **“for Hi-Tech Agriculture (i.e. Tissue culture, green houses, Mushroom activities), provided the power supply is exclusively utilized by such Hi-Tech Agriculture consumers for the purpose directly concerned with crop cultivation process and further provided that the power is not utilized for any Engineering or Industrial**

process.” Annexure-F,G and H filed alongwith reply of non applicant describe restrictive MERC tariff orders. Record show that the considering the wording in relevant tariff order, the matter was referred to Chief Engineer (Commercial). Chief Engineer (Commercial) directed to verify the purpose as per MERC provisions in applicant’s premises and apply tariff as per predominant use of power supply. Therefore, the team was formed to inspect premises of the applicant which inspected premises on 06.01.2016 and observed that in various Laboratories in applicant’s premises including Tissue culture Laboratory Hi-Tech Research and Development activities are carried on the seeds of various agriculture produce to develop high yielding and disease resistant variety of seeds. These seeds are than planted in the green houses for testing the results. The mass scale cultivation processing of seeds are carried outside the said premises and then the seeds are sold by the Company. Annexure-J – with reply of non applicant is inspection report of the inspection team.

20. It is noteworthy that **“As per MERC Tariff Order dt. 16.08.2012 and 26.06.2015, the Research and Development Unit situated outside Industrial Premises are categorized as per HT-II (HT Commercial) Tariff category”**. This important point is specifically noted on page No.24 & 25 in Annexure-H filed alognwith reply of non applicant. Therefore, it is but natural that non applicant informed to applicant as per letter dt. 05.032016 about non-acceptance of their request for change in tariff from HT-IC (HT Industrial Express Feeder) to HT-V : HT Agriculture and requested to submit their representation to prove their purpose of power supply otherwise existing tariff category HT-IC (HT Industrial Express Feeder) will be change to HT-II (HT Commercial Express Feeder) to the above

H.T. connection w.e.f. 01.08.2012 as per MERC Tariff Order dt., 16.08.2012. Annexure-L with reply of non applicant is said letter of MSEDCL dt. 05.03.2016. Record shows that applicant failed to produce satisfactory evident or documents regarding use of power supply other then research and development in their premises. In representation of the applicant dt. 14.05.2015 with supporting document for certification of Registration for exemption of central excise duty from Govt. of India letter dt. 01.04.2015 mentioning – house research & development unit. Therefore, MSEDCL intimated the applicant as per letter dt. 28.03.2016 regarding change in their existing tariff category HT-IC (HT Industrial Express Feeder) to HT-II (HT Commercial Express Feeder) w.e.f. 01.08.2012. Annexure-M filed with reply of non applicant is copy of letter of MSEDCL dt. 18.03.2016.

21. Therefore, accordingly bill for the applicant for the month April,2016 & May,2016 is generated with tariff category HT-II-E (HT Commercial Express Feeder). Annexure-N with reply of non applicant is the same bill. MSEDCL prepared supplementary bill as per letter dt. 25.04.2016 for amount of Rs.1,44,84,190/- as difference of tariff for the period 01.08.2012 to 31.03.2016. Annexure-O with reply of non applicant is said supplementary bill dt. 25.04.2016.

22. Therefore, MSEDCL has legally issued and served disconnection notice to the applicant as per letter No.2887/8 dt/ 22.06.2016 is due to part payment done by the applicant of the bill generated in the month of May,2016. The bill of the applicant for the month of May,2016 is generated for the amount of Rs. 10,33,320/- whereas from applicant made part payment of Rs.5,68,885/-, therefore, MSEDCL served disconnection notice to the applicant for balance amount of Rs. 4,73,755/- as per Annexure-Q filed with reply of non applicant. In the light of the above facts

and circumstances of the matter MSEDCL has served disconnection notice to the applicant as per letter No.2884, dt. 22.06.2016 for payment of Rs.1,44,84,190/- as difference amount for the period from 01.08.2012 to 31.03.2016. In our opinion it is legal and correct as per MERC Tariff Order i.e. 16.08.2012 and according to purpose of use of power supply by the applicant. Annexure-R filed with reply of non applicant is the said important document. The supplementary bill issued by MERC is legal and it is duly served on the applicant vide dt. 25.04.2016. Therefore, the date of letter of MSEDCL is the date of supplementary bill.

23. Bearing in mind the argument from both the sides and after perused of various important documents on record and after considering relevant MERC Tariff Orders we hold Industrial tariff is not applicable to the applicant as per MERC orders. Further more agricultural tariff is also not applicable to the applicant, as there is no direct crop is produced in applicant's premises as pr MERC Tariff Orders dt. 17.08.2009, 16.08.2012 & 26.06.2015. Applicant is planting seeds in the green houses in applicant's premises for testing the results for research and development in seeds. The mass scale cultivation / processing of seeds are carried outside the said premises and the seeds are sold by the Company. The use of power supply in premises of the applicant is for Research and Development only. This is observed during the inspection of authorities of MSEDCL and also proved from various documents submitted by the applicant alongwith reply which are Annexure-A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P,Q,R.

24. As per MERC Tariff Order dt. 16.08.2012 **"HT-II (HT Commercial) tariff category clause No.(n) – Research & Development Units situated outside Industrial Premises"** are to be categorized as per HT-II (HT Commercial) tariff

category. Therefore in our opinion change in applicant's existing tariff category HT-IC (HT Industrial Express Feeder) to HT-II (HT Commercial – Express Feeder) from April,2016 w.e.f. 01.08.2012 is legal and proper. Therefore we find no force in grievance of the applicant.

25. Now we turn to another important aspect of the matter whether present grievance application is tenable at Law and whether C.G.R.F can entertain such a grievance. It is pertinent to note that in grievance application prayer clause para 5 & para 6 applicant's claim relief to implement change of tariff **w.e.f. 01.08.2009** and claim refund of excess amount charged by way of difference in tariff **w.e.f. 01.08.2009**. **Therefore applicant is claiming change of tariff and difference of amount w.e.f. 01.08.2009 whereas applicant filed present grievance application on 28.06.2016.**

26. **According regulation 6.6 of MERC (CGRF & Electricity Ombudsman) Regulation 2006 reads as under :-**

“The Forum shall not admit any grievance unless it is filed within two (2) years from the date on which cause of action has arisen”.

As per prayer clause of the applicant in grievance application cause of action arose in 01.08.2009. Therefore, it was necessary for the applicant to file grievance application within 2 years of cause of action dt. 01.08.2009 i.e. on or before 01.08.2011. However present grievance application is filed on 28.06.2016 i.e. after 7 years of cause of action and therefore, it is hopelessly barred by limitation. According to Regulation 6.6 of the said Regulation, Forum even can not admit such a grievance. The language used in Regulation 6.6 is in the mandatory form.

27. On behalf of the applicant it was argued that there is continuous wrong and continuous cause of action and therefore grievance application is within limitation. However we don't agree with this argument. The concept of continuous cause of action and continuous wrong is applicable only before the competent Civil Court of Judicature with sufficient the proof. But concept of continuous wrong or continuous cause of action is not tenable according to said Regulation framed by Hon'ble MERC. On behalf of the applicant it is argued that there are certain rulings of the Hon'ble Supreme Court on the point of continuous cause of action. However such citation, year of ruling and name of the parties are not produced by the applicant. Zerox copies of such rulings are also not produced before the Forum for perusal. Therefore, we find no force in the said argument. It is true that considering the factual circumstances of the case, there are certain authorities about continuous case of action but these authorities are for Civil Litigation before Civil Court and not for the cases tried as per relevant regulations framed by Hon'ble MERC. **According to Regulation 6.19 of the said Regulation "The Forum shall not be bound by code of Civil Procedure 1908 or the Indian Evident Act,1872 as in force from time to time. Therefore Civil Procedure Code and Indian Evident Act is not applicable to the litigation before this Forum and hence present litigation can not be decided as if it is a civil suit."** Therefore concept of continuous cause of action is not applicable to this case.

28. Further more it is very flimsy and funny to argue that there is continuous wrong or continuous cause of action. Applicant alleged in prayer clause para 5 & 6 of grievance application that cause of action arose on 01.08.2009. However it is rather surprising to note that since date of cause of action 01.08.2009 applicant

was slipping over his rights years together for 7 years and on one fine morning i.e. 14.05.2015 for the first time applicant sent letter to MSEDCL for change in tariff from HT-IC (HT Industrial Express Feeder) to HT-V : HT Agriculture alleging that they are engaged in like activities. It is pertinent to note that it is no where case of applicant that since the date of cause of action 01.08.2009 applicant was filing various applications for change of category in 2009,2010,2011,2012,2013 & 2014. If applicant would have issued any letter requesting MSEDCL to change in tariff every year since 2009 then perhaps before the Civil Court (Not before this Forum) it could have been said the theory of continuous wrong or continuous cause of action. Therefore in our opinion argument of applicant side is not legal and proper.

29. It is again surprising to note that though applicant claimed amount of difference of tariff w.e.f. 01.08.2009 in the grievance application but it is a great surprise that this prayer is only in the grievance application claiming the arrears w.e.f. 01.08.2009. It is noteworthy that Article –A alongwith reply of non applicant is the first application filed by the applicant to MSEDCL about change in tariff and same application is also produced by applicant as per Annexure A-6 alongwith the application. It is noteworthy that in initial application dt. 14.05.2015 there is no prayer to claim difference of tariff w.e.f. 01.08.2009. It is noteworthy that in entire correspondence by the applicant to non applicant since 14.05.2015 till filing application before IGRC applicant did not mentioned anywhere and did not claimed amount of difference of tariff w.e.d. 01.08.2009. It is clear that after entire rounds of letter correspondence between the parties then on advise of somebody else and with intention to grab more amount from MSEDCL, then by way of after thought, applicant for the first time developed imaginary story and claimed the difference of

tariff w.e.f. 01.08.2009. According to relevant regulations it was necessary for the applicant first to file application to MSEDCL to pay amount of difference of tariff w.e.f. 01.08.2009 and after that if grievance is not redressed, then only one can raise such ground before IGRC and CGRF. Here in this case, before approach to our Forum applicant did not claim amount of difference of tariff w.e.f. 01.08.2009 to MSEDCL authorities in any letter correspondence. Therefore this claim of amount of difference of tariff w.e.f. 01.08.2009 which is hopelessly barred by limitation is untenable at law and deserves to be dismissed.

30. Applicant also claimed Rs. 1,00,000/- compensation for alleged mental and physical torture and compensation as per SOP and cost of Rs.10,000/-. However in our opinion these prayers are not legal and proper. Since 01.08.2009 applicant was sleeping over his right till filing his first application dt. 14.05.2015 and therefore there is no question of physical and mental torture to the applicant. Officers of MSEDCL acted perfectly within frame law and in accordance with tariff order. Therefore, no compensation can be granted according to SOP. Record shows that applicant filed false, frivolous and vexatious application therefore he is not entitled for cost of proceeding.

31. On behalf of the applicant the reliance is placed on judgement delivered by this Forum in CGRF Case No. 57/2008 decided on 20.12.2008 by our learned Predecessor's decision in the matter of Mahabeej Bio-Technology Centre v/s MSEDCL. First of all judgement delivered by our Predecessor can not be treated as authority binding on this Forum. Present office bearers of the Forum are not signatory to the said judgement. Secondly that judgement is delivered by our Predecessor considering peculiar facts and circumstances of that case. However

fact of the present case are totally different and distinguishable. As per fact of the present case there is no direct crop is produced in applicant's premises. Therefore that judgement is not applicable to the present case. Furthermore date of said judgement is 20.12.2008. Relevant dates of MERC Tariff Orders are 17.08.2009, 16.08.2012 and 26.06.2015. At the time of deciding the matter of case 57/2008 Mahabeej V/s MSEDCL MERC Tariff Order dt. 16.08.2012 was not in existence. Therefore, that case was decided on 20.12.2008 considering relevant tariff order which was applicable at that time. After four years of delivery of that judgement then new MERC Tariff Order was passed on 16.08.2012. Furthermore facts of the present case are different and distinguishable from the fact of that matter. Lastly in that matter applicant immediately approached to IGRC within limitation and then to CGRF. However in the case in hand applicant was sleeping over his rights years together. Therefore, that judgement is not applicable to this case.

32. Applicant relied on the authority of Hon'ble MERC Case No.21/2002. Jain Irrigation System Vs/ MSEDCL decided on 02.09.2004 and authority of Hon. Appellate Tribunal Electrical in appeal No. 83/2007 decided on 15.04.2009. MSEDCL V/s MERC and others. We have carefully perused both these authorities. However facts of both these authorities are totally different and distinguishable from the facts of the case in hand. Therefore, these authorities are not applicable to the present case. As per facts of citing authority, applicant was engaged in development and supply of Micro (Drip) and Sprincklers, Irrigation System, Manufacturer of Bio-Fertilizers and Pesticides, **Food (fruits) Agriculture**, Tissue culture plant materials and seeds etc. and where undertaking the units at three different villages namely (1) Mohadi (2) Shirkoli (3) Bambhori. There were

cultivating the food, fruits, onion and vegetables. However as per facts of the present case applicant is not doing activities concerned that crop cultivation process directly. Applicant is planting seeds in Green Houses in applicant's premises for testing the results for research and development in seeds. The mass scale cultivation/processing of seeds are carried outside said premises and the seeds are sold by the Company. Therefore, fact of the present case is totally different and distinguishable and hence authorities cited by the applicant are not applicable to the case in hand.

33. Further more Hon.MERC decided case 21/2002 on 02.09.2004 and Hon. Appellate Tribunal for Electric decided appeal No. 83/07 on dt. 15.04.2009. Both these judgments are delivered before New tariff order dt. 16.08.2012 and 26.06.2015. While deciding those matters MERC Tariff Order dt. 16.08.2012 was not in existence. In the case in hand MSEDCL considered relevant provisions of MERC Tariff Order dt. 16.08.2012 and then passed necessary orders. As tariff order dt. 16.08.2012 was not in existence at the time of deciding said authorities and as facts of the present case are different and distinguishable therefore these authorities are not applicable to the case in hand.

34. It is truth that supplementary bill dt. 25.04.2016 is raised for amount of Rs.1,44,84,190/- as difference amount for the period from 01.08.2012 to 31.03.2016. It can not be said that it is barred by limitation. New tariff order of MERC is dt. 16.08.2012. It is settle law of land upto Hon.Supreme Court that there is limitation of 3 years to recover such bills according to the provisions of Indian Limitation Act. Therefore according to Indian Limitation Act, there is 3 years limitation and hence claim of amount of Rs.1,44,84,190/- as difference amount for

the period from 01.08.2012 to 31.03.2016 is perfectly within limitation of 3 years and recoverable from applicant.

35. For these reasons we hold that disconnection notice issued by MSEDCL to the applicant dt. 22.06.2016 for non payment of Rs.1,44,84,190/- as difference amount for the period from 01.08.2012 to 31.03.2016 is legal and proper and can not be set aside. Notice is duly served on the applicant. It is a huge amount of about Rs. 1,44,84,190/- therefore applicant is trying to prolong payment of this huge amount by adopting various tactics on flimsy grounds.

36. For these reasons in our opinion there is no substance and no force in the grievance application and in the opinion of the majority view grievance application deserves to be dismissed.

37. **Dissenting note of Hon. Member (CPO) of the Forum.**

"1. The applicant's grievance is non implementation of proper tariff category and refusal to change tariff category from HT-IC to HT-V: HT-Agriculture by Distribution Licensee (N.A.).

2. Applicant's further grievance is that Distribution Licensee issued disconnection notices No.2884 and 2887/8 dated 22-06-2016 (received on 24-06-2016) at the hands of Dy. Law Officer and bills dated 25-04-2016.

3. To quash order of H'ble IGRC dated 13-06-2016 in case No.5/2016 and letter dated 28-03-2016 and Dt.25-04-2016 issued by the non-applicant.

4. To quash the arbitrary supplementary bill raised by non-applicant vide letter No.SE/O&M/NUC/HT/ACCTT/001907 dated 25-04-2016 alongwith bill for the period of August-2012 to March-2016 as it is illegal and change the tariff category from date of implementation (01-08-2009) of such tariff by MERC.

5. To refund the excess amount charged by way of difference in tariff between HT-IC to HT-V-HT-Agriculture from effective date 01-08-2009 of MERC tariff order alongwith interest as per section 62(6) of the Electricity Act 2003 and also pay SOP compensation as per SOP Regulation 2014 (Standard 8.(ii) 'other services') and section 4.13 of MERC's Regulation 2014 (change of name and change of tariff category).
6. To direct non-applicant to pay Rs.1.00 Lakh compensation for mental & physical agony & Rs.10000/- for pursuing this litigation & cost..
7. To grant interim order directing non-applicant Nagpur not to disconnect the supply and any coercive action of recovery of bill.
8. To direct disciplinary action against officials for abusing the power and process of law in dealing with the present application.

I have heard the arguments of both the parties on 18-07-2016. I have perused all papers on record as well as documents filed by both the parties alongwith orders (all annexure) & MERC's order dated 11-02-2003 in case No.24/2001, order of Appellate Tribunal for electricity dated 15-04-2009 in case No.83/07 and order of Hon'ble Electricity Ombudsman, Nagpur dated 11-12-2014 in representation No.24/2014 (available in file of E.O.orders) and MERC's order dated 02-09-2004 in case No.21/2002. I also perused the literature regarding Maharashtra Bio Technology policy 2001 filed by applicant and other relevant literature available on internet i.e. Maharashtra (Research provided the answer). Gujarat Agro Industrial Policy A.D. and beyond, Kerala Bio Technology Policy 2003.

The following issues arise for determination and I give findings on them as under:

1. Whether the activities carried on by the applicant fall within the tariff category of HT-V to HT-Agriculture ? Yes
2. Whether the order of IGRC is correct and sustainable under MERC (CGRF & E.O.) Regulation 2006 ? No
3. Whether the applicant is entitle to change of category from HT-IC to HT-V- HT-Agriculture within stipulated period as per MERC Regulation and compensation for delay in change of tariff ? Yes
4. Whether applicant is entitle to refund of extra charges (difference between HT-IC & HT-V- HT-Agriculture) recovered from 01-08-2009 under section 62(6) of the Electricity Act 2003 ? Yes
5. Whether the supplementary bill raised by the non-applicant vide SE/O&M/ NUC/HT/ACCTT/001907 dated 25-04-2016 alongwith bill for the period August-2012 to March-2016 is correct and legal as per settle position of Law ? No
6. Whether the applicant is entitle for compensation of Rs.1.00 lakh for mental & physical agony due to illegal electricity bill and cost of litigation Rs.10000/-? Yes

The conduct of Shri SW.Pawar, Legal Advisor Aurangabad Zone and MSEDCL official (NUZ) Nagpur.

It is observed from the record that non-applicant vide their letter dated YOL No.SE/NUC/Tech/541 dated 03-02-2016 (Annexure k page 35)(filed by non-applicant) requested the Chief Engineer, MSEDCL Aurangabad Zone who further advised to Legal Adviser (Aurangabad Zone) to give opinion that change of tariff from HT-IC (HT industrial express feeder) to HT-V - HT-Agriculture in respect of HT consumer M/s Ankur Seeds Pvt.Ltd. Legal Adviser (Aurangabad Zone) vide their letter No.CE/AZ/ LAAZ/Legal/179 dated 18-02-2016 stated as under.

***“Perused above referred letter and the accompanying documents From the perusal of the tariff order of MERC and Commercial circular No.243, it is seen that HT-V Agricultural tariff is only for the purpose concerned directly with crop cultivation. In the category HT-II Commercial point No.’N’, it is in connection with research and development units situated outside industrial premises, in that case, the tariff applicable is commercial. In the present case in hand, it is clear that consumer’s main activity is research and development and it is also mentioned so in the broacher of the said company and the said R&D is for the purpose of selling seeds. After going through the documents and tariff orders, I am of the opinion that the HT-II Commercial should be applied to the said consumer. The period of applicability of correct tariff should be from the date of on which the said tariff was applicable.*”**

The opinion is based upon the documents submitted to this office.”

The non-applicant in reply at para 7 taken the support of the above opinion of Legal Adviser (Aurangabad Zone) dated 18-02-2016. From the Annexure K Sr. page no.35 it is crystal clear that non-applicant in reply **stated to misguide CGRF**, that the **Legal Adviser, Nagpur Zone** on dated 08-02-2016 opined the same i.e Research and Development units situated outside industrial premises are categorize HT-IC to HT-Commercial category.

Non-applicant’s submission regarding legal opinion dated 08-02-2016 obtained from legal Adviser, Nagpur zone is incorrect because evidence on record shows that legal opinion is dated 18-02-2016 is obtained from Aurangabad Zone. On the contrary on page 34 (Annexure J) at the bottom it is clearly mentioned to

get legal opinion from Legal Adviser (NZ) but shows the ulterior motive of non-applicant. It is millioner question that when Legal Adviser at Nagpur Zone was suggested and available for opinion then why opinion of Legal Adviser, Aurangabad zone was obtained which is deliberate attempt of non-applicant to divert the entire issue and ultimately mislead the CGRF Nagpur as well as to support his incorrect presumption.

On close scrutiny of documents filed by applicant at page no.118,119 & 120 received under subject - information required under RTI 2005, **regarding MSEDCL HT-V – HT-Agriculture category companies and establishment and tariff applicable to it, obtained** by concernes of applicant. Public Information Officer vide letter dated 24-06-2016 i.e. Executive Engineer (Admn.), O&M Circle, MSEDCL, Jalna and copy to Chief Engineer Aurangabad Zone, Aurangabad. It is revealed that 14 Companies classified in Agriculture i.e. HT-V – HT-Agriculture. At.Sr.No.4 M/s Bejo Shital Seeds Pvt.Ltd. Jalna is categories Agriculture High Tech as well as electric bill of MSEDCL of the said company activity - Research & TST SRVCE express feeders Flag.

Hence opinion of Legal Adviser (AZN) is false and fabricated and just to support contention of officials of MSEDCL Nagpur Urban Zone Nagpur without knowing the factual ground reality of his Zone when even activities - Research and T.S.T. SRVCE of M/s. Bijo Shital Seeds Pvt.Ltd. is correctly categorize as High Tech Agriculture i.e. HT-V – HT-Agriculture.

Secondly neither non-applicant nor Legal Adviser Aurangabad disclosed documents submitted by non-applicant when entire opinion is based upon documents submitted to office of Chief Engineer, Aurangabad Zone.

The aspect of Research and development units situated outside industrial premises are categorized as HT-II – HT-Commercial on the basis of so called joint inspection report as well as the opinion of Legal Adviser (AZN), is totally misconceived by N.A. to apply HT-II – HT-Commercial category. Non-applicant and Legal Adviser (AZN) intentionally referring irrelevant provision of tariff order without referring clear cut provision categories in tariff HT-V – HT-Agriculture as well as specified in Maharashtra Bio Technology Policy. It is also evident that Research and Development Activities pertains to High Tech Activities are carried out in the same premises of the applicant. Hence the contention of the about R&D units situated outside industrial premises of applicant is not applicable in the present case.

I am of the firm opinion that the aforesaid contention of non-applicant is with ulterior motto to mislead the applicant and CGRF and to divert the main issue of HT-V – HT-Agriculture to HT-Commercial, deserves to be rejected at the initial stage itself.

Hence this opinion of Legal Adviser, (AZN) is self contradictory as well as far away from truth vide documents available under RTI information. Therefore such type of opinion can not be sustained in the eyes of law. Hence deserves to be rejected at the 1st instance alongwith so called joint inspection note by Executive Engineer, MSEDCL, Buttibori and Executive Engineer (Adm.) Nagpur, when Executive Engineer, MSEDCL, Buttibori himself endorsed in annexure B page 5 filed by non-applicant that uses of HT connection is predominated High Tech Agriculture.

Issue No.1 Whether the activities carried on by the applicant fall within the tariff

category of HT-V : HT-Agriculture ?. Yes

a) Applicant is HT-IC category consumer having electricity connection and electricity bills paid regularly.

b) According to applicant he is running Bio technology Research and Development unit containing Tissue culture laboratories, Green houses, poly houses and other allied Bio technology laboratories through which purely research Development and High technology crop cultivation activities is carried out and ultimate use of electricity for agriculture purpose at his research and Development unit exclusively for the betterment of farmers in line with **Maharashtra Bio technology policy 2001**.

c) According to applicant, MSEDCL, recommended applicability of “**Agriculture category tariff to all consumers engaged in High Technology Agriculture activities**”. H’ble MERC upheld the contention in order issued on 17-08-2009 in tariff petition case No.116 of 2008 (regarding HT-Agriculture) (Refer page No.198 & 236 of tariff order Annexure A-4 i.e.

COMMISSION’S RULING – The Commission finds merit in MSEDCL’s suggestion that consumers engaged in high-tech agricultural activity should be eligible to charged at agricultural tariff, since this is in line with Commissions, philosophy in this regard as outlined in earlier tariff orders. MSEDCL’s suggestion that the electricity supply should not be utilized for any engineering & industrial purposes is also logical, since if any industrial activity is being undertaken then the industrial tariff would be applicable,

5.4 – Commission’s Tariff philosophy (case No.116 of 2006 dated 17-08-2009 effective from 01-08-2009.

HT-V-HT-Agriculture – Applicability:

Applicable for High Tension agricultural pumping loads, including HT- lift irrigation schemes (Irrespective of ownership & also for.

ii) High Tech agricultural (i.e. Green Houses, Tissue culture, Mashrooms etc.) purpose.

d) According to applicant as per Commercial Circular No.102 dated 3-11-2009 subject – Revision in tariff – implementation thereof – Hence the guidelines are issued for implementation of the said order of the Commission. Non-applicants are responsible under legal obligations to effect changes for implementation of tariff as per tariff order of MERC & as per clause 13 of MERC (Electricity supply code & conditions of supply Regulation 2005) as under,

Clause -13 – Classification & Reclassificaton of consumers into tariff categories

“The Distribution licensee may classify or reclassify a consumers in various. commission approved tariff categories based on the purpose of usage of supply by such consumer.

“Provided that the Distribution licensee shall not create any tariff category other than those approved by the Commission.”

e) According to applicant, they applied & requested non-applicant to change of tariff category from existing HT-IC to HT-V : HT-Agriculture on 14-05-2015.

f) Applicant said that as per instruction of SE/NUC/Tech/2154 dated 22-05-2015, to Executive Engineer, O&M Dn., MSEDCL, Butibori – Dy.Executive Engineer carried out the inspection of unit on 26-05-2015 and on specific reference of aforesaid letter i.e. for change in tariff to HT-V : HT-Agriculture as

activities like Tissue culture, Green house and other High Tech process for crop cultivation process is carried in their unit.

Dy.Executive Engineer report was submitted on 18-06-2015 is as under –

Uses of Electricity :- *“At the above site the electric supply is used for extensive research work in the field of agriculture”. There are various laboratories including Tissue culture laboratory. Also there are 4-5 Green houses where various crops are grown for research activities. Also there are 2 Nos. conference/meeting Halls that are used by the company for self use. Thus main usage is Hitech agriculture research work”.*

Executive Engineer MSEDCL Butibori vide letter dated 22-06-2015 further endorsed i.e. The use of this HT connection is dominated Hi-tech Agriculture.

g) Applicant was requested by non-applicant vide letter dated 21-07-2015 to submit confirmation /certification of High Tech crop cultivation activities are carried out from Superintending Agriculture Officer Nagpur – so that proposal for change in tariff HT-IC to HT-Agriculture can be processed to Competent Authority.

Dist. Superintending Agriculture Officer Nagpur vide letter dated 30-07-2015 issued letter that “Technical Officer of DSAO has visited Hi-Tech Breeding support lab of company on 30-07-2015 and found that there are various laboratories including Tissue culture laboratory. Also found 4 – 5 Green houses in which research, development - production of various crop is undergoing.

h) Non-applicant vide letter dated 01-08-2015 requested Chief Engineer (Commercial) Mumbai for necessary guideline for change of tariff HT-IC – HT-V-HT-Agriculture and again requested vide letter dated 09-09-2015, 31-10-2015.

Chief Engineer(Commercial) Mumbai vide letter dated 31-10-2015 clarified

that MERC in its tariff order dated 26-06-2015 and tariff orders issued from time to time as defined applicability of High Tech. agriculture (i.e. Tissue culture, Green house, Mushroom activities) “Provided the power supply is exclusively utilized by such High Tech Agriculture consumers for purpose directly concerned with crop cultivation process and further provided that the power is not utilized for any engineering or industrial process. Note - which is nothing new but included in applicability of HT-V-HT-Agriculture Commercial in circular no.175 dated 05-09-2012 & circular No.243 dated 03-07-2015 & non-applicant were fully aware of it.”

According to applicant, further requested vide letter dated 03-03-2016 but non-applicant in reply dated 05-03-2016 informed applicant to submit reply to prove purpose of power supply within 7 days. Applicant vide his letter dated 19-03-2016, replied alongwith order of (CGRF Nagpur) in case no.057/2008 and further submitted to consider the request for change of tariff HT-V-HT-Agriculture but non-applicant further denied vide letter dated 28-03-2016. Non-applicant vide reply dated 30-06-2016 admitted that applicant's letter dated 14-05-2015 for change of tariff to HT-V-HT-Agriculture stating that they are engaged in activities like Tissue culture, Green houses other High Tech process.

Non-applicant also stated that the inspection report of Dy.Executive Engineer Hingana dated 26-05-2015 that electric supply used for Research activities and main uses is High Tech Agriculture research work.

Non-applicant further stated that report of “The District Superintending Agricultural Officer dated 30-07-2015 also confirms about the predominant use for research & development work.

Non-applicant on basis of A-1 Forms dated 08-05-2006 & June-2010,

purpose as Bio Tech. Research laboratory & laboratory for Research in Bio Technology. Non-applicant further stated that HT-V HT-Agriculture tariff is applicable for High Tech Agriculture (i.e. Tissue culture, Green houses, Mushroom activities), provided the power supply is exclusively utilized by such High tech Agriculture consumers for purpose directly concerned with crop cultivation & further provided that power is not utilized for any engineering or industrial process.

Non-applicant stated as per inspection by Executive Engineer (Admn.) NUC Nagpur & Executive Engineer Buttibori Division dated 06-01-2016 and confirmed that in the various laboratory in the applicant premises including Tissue culture laboratory High Tech Research & Development activities are carried on the seeds of various agriculture produce to develop high yielding and disease resistant variety of seeds. These seeds are then planted in green houses for testing the results. The mass scale cultivation / processing of seeds are carried out outside the said premises & then the seeds are sold by company.

Non-applicant further stated that as per MERC tariff order dated 16-08-2012 & 26-06-2015, the Research & Development units situated out side industrial premises are categorized as per HT-II- (HT-Commercial) tariff category. Firstly the contention of mass scale cultivation outside premises is done by Agriculturist not by the applicant. Secondly High Tech Agriculture Research & Development units are situated in the said premises. The same is endorsed by the inspection report by Dy.Executive Engineer as well as District Superintending Agricultural Officer and further endorsed by the Executive Engineer, MSEDCL, Buttibori. Hence contention of the non-applicant to divert High Tech Agriculture activity to Research & Development units outside industrial premises is absolutely intentional

without any basis for the same. Hence contention of the N.A. of applying commercial tariff in present case regarding Research and Development units situated outside industrial premises is baseless and can not be accepted in the absence of cogent evidence on record and totally misconceived and mere presumption of N.A. does not stand to judicial scrutiny.

It is observed by me that inspection report dated 26-05-2015 by Dy.Executive Engineer, Hingna & District Superintending Agriculture Officer Nagpur dated 30-07-2015 and forwarding letter of Executive Engineer, MSEDCL Buttibori, Nagpur are crystal clear that activities at the applicant's premises are Hitech Agriculture entitling him for HT-V-HT-Agriculture Tariff category.

It is observed from the para 12 of commercial circular no.0102 dated 03-11-2009 regarding applicability of tariff to High Tech Agriculture activity i.e. Agriculture tariff is applicable to High Tech Agriculture consumer where the purpose is directly concerned with crop cultivation process. In view of the above two reports and further endorsed by the same Executive Engineer Buttibori, there is no ambiguity that applicant is utilizing the electricity supply for the High Tech Agriculture (i.e. Tissue culture, Green houses & Mushroom activity) in his premises and power supply is exclusively utilized by the Applicant as High Tech Agriculture consumer for the purpose directly concerned with for crop cultivation process in green houses in his industrial premises.

The basis of the contention of the non-applicant that Research & Development Unit is situated outside industrial premises is neither disclosed by cogent document and nor supported by joint inspection report by Executive Engineer MSEDCL Buttibori and Executive Engineer (Admn.). An applicant vide

their application dated 30-03-2016 (Annexure A-22) page 68 requested non-applicant to provide the copy of the joint inspection report done by their officers. Non-applicant in reply dated 05-04-2016 (Annexure A 23 page 69) refused to disclose any report copies. It is very contradictory submission of non-applicant that on one side then have provided the copy the copy of Dy.Executive Engineer's report as well as letter of Executive Engineer, MSEDCL Buttibori with endorsement which has proved the Hightech Agriculture and hesitating to provide the report of joint inspection. Non-applicant did not disclose the copy of report to appellant and directly filed copy in the form of office note dated 11-01-2016 before CGRF vide their reply. This shows that non-applicant is concealing the vital information available which is very essential in deciding the contention of the non-applicant regarding so called Research & Development units situated outside industrial premises. Hence it will not be out of reference to draw adverse inference against non-applicant and inference & contention of the non-applicant is deserves to be denied.

It is not the contention of non-applicant that applicant is utilizing power for any engineering or industrial process and hence 2nd part of para 12 (ii) as above is not concerned in the present contest.

In the same way on page 15- HT-V – HT-Agriculture (iii) of Commercial circular No.175 dated 05-09-2012, Applicant satisfies the criteria regarding HT-V – HT-Agriculture. Hence there is no doubt or ambiguity in my mind that applicant comes in Ht-V – HT-Agriculture tariff category.

Non-applicant vide their letter dated 01-08-2015, 09-09-2015, 31-10-2015 themselves have requested Chief Engineer (Commercial), Mumbai for instructions

on change of tariff. Hence contention of non-applicant can not be digested that applicant does not come under HT-V – HT-Agriculture when the same Executive Engineer, MSEDCL, Buttibori part of joint inspection inferred that the use of HT connection is dominated High Tech Agriculture.

Non-applicant in reply alleged that no certificate regarding their unit covered under Bio Tech policy of Govt. of Maharashtra/India is submitted which shows their bias approach even though applicant submitted the Annexure A-27, A-29, A-30 etc. dated 01-04-2015, 28-09-2015, 03-03-2016 & 08-12-2014 issued by Govt. of India i.e. certification of registration, renewal of recognition of in home R&D units, DSIR national award for R&D efforts in industry, Registration of research institution, Bio information industrial training programme (BIITP) 2015-2016 sponsored by Department of Bio Technology Govt. of India, release order by Bio Technology Industry Research assistance Council, and Rashtrasant Tukdoji Maharaj Nagpur University as place for higher learning & research leading to PHD degree in Botany Bio Technology & Bio Chemistry in the faculty of science for 5 year vide letter dated 27-06-2007.

The allegation of non submission of certificate further falsifies the contention of non-applicant in the absence of its specific requirement alongwith A-1 form and specific demand for the same by the non-applicant at the time of submission of A-1 in 2006 and 2010.

So far application of tariff as predominant use of power supply is proved by the inspection reports of Dy.Executive Engineer & Dist. Superintending Agriculture Officer's certificate and forwarding letter of Executive Engineer, MSEDCL, Buttibori dated 18-06-2015, 30-07-2015 & 22-06-2015.

Secondly on one side non-applicant is admitting in para 6 of reply that it is confirmed that in the various laboratories in the applicant premises including tissue culture, High Tech Research & Development activities are carried on the seeds of various agriculture produce to develop Hi yielding & disease resistant variety of seeds. This seeds are then planted in the green houses for testing the results.

Annexure E at Sr.page 15 filed by N.A. regarding letter dated 24-05-2010 of applicant establishing that department of Bio Technology Govt. of India has approved his laboratory for research in Bio Technology of plants & seeds for this purpose and applicant has to expand his infrastructure & equipment as per the international standards, accordingly they have applied for enhancement of load in the year 2010.

It is obvious that seeds cultivation/processing of seeds are carried out in the green houses (4-5) where various crops are grown for research activities and main usages is Hi tech agriculture research work but in absence of any cogent documentary evidence by non-applicant, the contention of mass scale cultivation & processing of seeds are carried out side is baseless & after thought & N.A. further failed to established that power supply of applicants premises is used outside industrial premises for any mass scale cultivation and processing of seeds in support of their contention.

Applicant's all activities of High Tech Agriculture (Tissue culture, Green houses) are in the same industrial premises. It can further be concluded that non-applicant is dealing the representation of applicant shortsightedly & without application of mind and intentionally ignoring the specific provision on page 15 of Annexure 'A'. Approved tariff schedule in case no.19 of 2012 regarding HT-V HT-

Agriculture alongwith applicability as well clause (iii) and MERC tariff order in case no.12 of 2014 dated 26-06-2015.

I am of firm opinion that reports of Dy.Executive Engineer & Dist. Superintending Agriculture Officer's as well as endorsement of Executive Engineer, MSEDCL, Buttibori at the first instant are more important. Because they are technical expert in the field of electricity as well as agriculture and I did not find any significance or propriety to obtain opinion of legal Adviser of Aurangabad when there is no legal issue as such and which is based on undisclosed documents.

To enhance the clarity about doubts in the minds of non-applicant, I intend to mention the Agro Industrial Policies of various states available on record as well on internet.

1. **Maharashtra Biotechnology Policy 2001 (supplied by applicant)**

Para 15, 18 throws the light on development in Agro Biotechnology as well as Maharashtra state is a major contributor to agricultural wealth in country with objectives at para 22 - To develop the Biotechnology industry in the state in order to –

To provide to the farmers of the state better, high yielding, drought and pest resistant crops suited to the good climatic conditions of the state. para 23 - To lead to Biotechnology.

Para 36 – Financial incentives – Govt. will make the industrial power tariff applicable to all Biotechnology industries engaged in the production of high end products. This benefit will be applicable to both new & old companies additionally for agricultural Biotechnology companies will be given power at agriculture rates.
All Biotechnological industries will be exempt from statutory power cuts.

1A **Maharashtra - Research provides the answers of November-2010**
(available on internet).

In addition to above in “Maharashtra Biotechnology policy 2001 – Biotechnology units will be exempt from paying Electricity duty. Captive power generation will be permitted to Biotechnology units throughout the state. More & more incentives are offered in paragraphs below on page 213 which shows the Broad & comprehensive policies to promote Biotechnology as well High Tech Agriculture.

2. **Gujarat Agro Industrial Policy A.D & Beyond –**

This policy is very broad base comprehensive document.

In para 1.8 – Definition - Hightech & Biotechnology based Agriculture –
'High Tech and Bio-Technology based Agriculture means and includes projects, which will involve any one of the processes such as – Tissue culture, production of Transgenic plants, mass multiplication of parasites/predators, fermentation plant for Bio-fertilizers, gene mapping, cloning genetic engineering, Green houses and any other frontier technology having agro industrial application.

In para 4.5 power – The state Govt intends to encourage propagation of tissue culture in horticulture and agriculture and also R&D in Biotechnology the state Govt. therefore may consider levying power tariff on tissue culture and R&D in Biotechnology at the same rates as applicable for direct agriculture.

3. **Kerala Biotechnology policy 2003 –**

Biotechnology the flavour of the twenty first century –

Page 217 – Kerala state as proactive enabler of Biotechnology

Important Agro Biotechnology companies will be given power at agriculture

rates.

Biotechnology industries will be exempted from statutory power cuts.

Biotechnology companies to be exempted from electricity duty.

Non-applicant vide their office note dated 11-01-2016 – “ *As per the MERC tariff order dated 16-08-2012 the Research & Development units situated outside Industrial premises were categorized as per HT-II (HT commercial) tariff category.*

It is to note that in the public hearings conducted by MERC while finalizing the tariff for 2015-2016 issues relating to recategorisation of R&D units which was categorized as HT-II commercial in. But MSEDCL ruled that “The commission has correctly differentiated the R&D units situated in or outside Industrial premises. MSEDCL further submitted that it is not proposing any change in the existing categorization applicable to the R&D units as approved by the commission in its tariff order dated 16 August, 2012 in case no.19 of 2012.” Thus the tariff category for the research & development units situated outside industrial premises remains as HT-II (HT-commercial) for 2015-2016 also.”

It is crystal clear that issues related to categorization R&D units by consumer like Bajaj Auto – who is dealing with Auto industry and hence R&D of Auto industry not considered by MSEDCL as well MERC. The comparison of the consumer like Bajaj Auto etc with the applicant who is dealing with Tissue culture and green houses, is absolutely irrelevant so as to refer order which relates to Automobile industries and not agriculture industries. Hence the contention of comparison by non-applicant with applicant is nothing but last attempt made by non-applicant to support irrelevant contention. Hence the contention in office note as well as in reply deserves to be dismissed in toto.

Applicant filed the orders copy of CGRF (Nagpur Urban Zone) Nagpur in case no.57/2008 decided on 20-12-2008 in case of “Mahabeej Biotechnology Centre V/s MSEDCL NUC Nagpur”. The applicant’s grievance is identical to the Mahabeej Biotechnology centre regarding application of HT-V Agriculture category. In order passed by CGRF, he treated the Mahabeej (applicant) as HT-V Agriculture tariff category consumer w.e.f.01-06-2008 and energy bills were revised w.e.f.01-06-2008.

In the case in hand majority submitted contention of non-applicant i.e. application of HT-II commercial is applicable & change of tariff to HT-V-HT Agriculture is not correct. But it is prudent practice that there should be consistency in order in identical situation & fact.

On this issue non-applicant said that tariff order of 2012 and 2015 is after the order of CGRF and it cannot be considered which is totally misconceived.

In the order of CGRF they have considered & mention on page 111 & 112 (Annexure A – 32).

“ In this respect, this forum has carefully gone through the relevant text of MERC’s tariff order dated 20-06-2008 passed in case no.72/2007 in the matter of MSEDCL’s petition for approval of annual performance review for financial year 2007-2008 & tariff for financial year 2008-2009. Under the caption of HT-V(HT-Agriculture), the commission has stated that this tariff rate is application w.e.f.01-06-2008 for Hi Tech Agriculture, pumping loads including HT lift irrigation scheme (LIS) irrespective of ownership and also for

- 1. Poultry (exclusively for Layer & Broiler Activities).*
- 2. High Tech Agricultural (i.e. Green Houses, Tissue Culture, Mushroom etc.) purpose;*

3. *Pre-cooling & cold storage for agricultural produce of farmers co-operative societies.*

The Commission has clearly categorized high tech tissue culture purpose as agriculture and hence the stand taken by the non-applicant while changing the tariff category of the applicant from HT-Agriculture to HT-II commercial tariff category w.e.f.01-06-2008 is without any basis. The non-applicant's action is thus not in tune with the commission's tariff order.

The non-applicant Company's local officials have not carefully interpreted the Company's commercial circulars and also the MERC's mandate."

Secondly tariff order dated 2012 and 2015 are identical to the tariff order of 2008 effective from 1st June, 2008. Hence non-applicant intentionally avoided to interpret it correctly. This order of the CGRF complied by non-applicant and non-applicant is silent in reply specifically as well as argument. In applicant's case it appears the total bias and lethargic approach of the non-applicant authorities.

Applicant filed on record copies of orders of Appellate Tribunal for electricity dated 15-06-2009 in appeal No.83/07 in case related to Mohadi Unit of J.I.system regarding S.P.I. tariff (old Agriculture tariff). The findings given in respect of the Mohadi Unit are as follows –

" A. JIS have filed an affidavit confirming that the activities undertaken at the Mohadi unit are essentially those of green house and tissue culture on the basis of information verified by the MSEB themselves. Further, MSEB had vide letter dated 24/11/98, granted approval to the application of SP-1 tariff to the Mohadi unit. However, MSEB had subsequently contended that upon examination of the activities carried out at the unit of the petitioner, it was observed that there was a

change in activity and hence, the SP-1 tariff was withdrawn. The MSEB have failed to produce the internal report which evidences the change in activity. In Order to effect the change in a tariff classification, it is necessary to provide evidence and material establishing that such change is merited. From the record, the MSEB does not appear to have produce any material or evidence which would make such a change in classification sustainable in law. The list of activities enumerated in the affidavit of the petitioner would appear to fall within the meaning of the term 'High Tech agriculture activities' as interpreted earlier and even expressly mentioned by MSEB while illustrating the applicability of the tariff category itself. Thus, the contention of SP-1 tariff already approved in respect of the Mohadi unit required to be changed, can not be sustained."

And para 16 at page 11 have clearly favoured the contention of applicant i.e. High Tech Agriculture.

Applicant file on record copy of order dated 02-09-2004 of MERC in case No.21/2002 regarding Mohadi units of JIS in addition to other units of JIS page 11 para 36, para 55 1,2,3,4 on page 21- is about Mohadi unit and MERC ordered against the non-applicant MSEDCL. On page 27 specifically in regard to Mohadi unit – with regard to the Mohadi unit in view of the commission finding that its activity constitute High Tech agriculture for the purpose of application of the SP-1 & successor tariff category, the excess amounting recovered by MSEB from JIS should be refunded to the petitioner by adjustment through its energy bills or by other means.

In view of the above observation & clear finds the action of non-applicant to classify to the applicant to HT-II (HT-commercial) is without any basis needs to be

quash & set aside and applicant deserves to be classified as Ht-V – HT-Agriculture as he is undertaking the activity of for High Tech Agriculture (i.e. Tissue culture, Green house, Mushroom activities) and power supply is exclusively utilized by such High Tech Agriculture consumers for purpose directly concerned with crop cultivation process.

Issue-2: Whether the order of IGRC is correct and sustainable under MERC (CGRF & E.O.) Regulation 2006? No

It is crystal clear that the non-applicant as well as IGRC has shown total disregards to the finding in orders of CGRF, MERC as well as Appellate Tribunal for Electricity, known fully well but just to show over efficiency which is matter of concern to be brought to the knowledge of M.D.of MSEDCL, Mumbai.

I feel it is necessary note that in every commercial circular on subject – Revision in tariff - implementation thereof –

Commercial circular issued by Director(Operation) non-applicant dated 03-11-2009, 05-09-2012, 03-07-2015 it is mentioned as under-

“The field officers are directed to ensure that wherever the tariff category redefined or newly created by the commission, the existing / prospective consumers should be properly categorized by actual field inspection immediately and the data to be immediately updated in the IT data base. These are only important guidelines and for actual implementation, the field officers are revealed to refer to detail order of MERC. All the stipulation & provisions are to be strictly followed”.

In case of the applicant the action of implementation was after request of applicant for change of tariff on the contrary it should have been immediately after

the above commercial circular on 03-11-2009, 05-09-2012, 03-07-2015 if they can prove that applicant comes in HT-II – HT-Commercial.

It is reveal that the order of IGRC is not signed by other quorum member present i.e. Mr. S.S.Vikhar, Manager(HR) & Mr. A.Y.Raut, Manager(F&A) which amounts to nullity. Secondly the IGRC order is passed on 13-06-2016 but appears to dispatched on 29-06-2016 only receipt of notice of CGRF dated 28-06-2016 for interim order & to cover up their own lapses which shows the bias approach to harass the applicant. Secondly applicant vide letter dated 25-05-2016 addressed to Chief Engineer MSEDCL, UUZ Nagpur received by office on 26-05-2016 clearly states that Shri Dhobale, Shri Khadatkar, Ms. Shende, three officials were present during hearing & then from where Mr.Vikhar, Mr.A.Y.Raut were imported to replace Mr.Khadatkar, Ms.Shende, madam came on quorum present. There is no comments of non-applicant besides complaint of applicant which further proves the extent of bias and arbitrary approach towards applicant as well as his representative, which is cause of concern for the Chief Engineer (NUZ) Nagpur to look into such type of working of Executive Engineer(Admn.) who himself was instrumental in joint inspection as well as incharge of IGRC, & same Executive Engineer also attended the proceeding before CGRF Nagpur with malafied intention which is not expected by MERC (CGRF & EO) Regulation, 2006.

In view of above observation IGRC order is not sustainable and hence deserves to be quash and set aside.

Issue-3: Whether applicant is entitled to change of tariff category from HT-IC to HT-V-HT-Agriculture within the stipulated period as per MERC SOP Regulation of 2005 and 2014 – compensation for delay in change of tariff - Yes

In view of the above observation in issue No.1 it is crystal clear that applicant is entitled for change of tariff category from HT-I/C to HT-V – HT-Agriculture. According to applicant the application for change of tariff category from HT-I/C – HT-V – HT-Agriculture was submitted to non-applicant on 14-05-2015 as they were not aware of changes in tariff and continued to pay bills as per tariff of HT-I/C. It is necessary to mention that in commercial circular dated 03-11-2009, 05-09-2012 & 03-07-2015 Director (Operation) fixed responsibility On all field officers to changes the tariff category redefined or newly created by the commercial, the existing/prospective consumers should be categorized by actual field inspection immediately but field officer including non-applicant appears to be negligent, reluctant to follow instruction since 2009 till 14-05-2015, as well as clause 13 (classification and reclassification of consumer into tariff categories) of MERC (Electricity supply code and other condition of supply) Regulation 2005.

As per Appendix 'A' of above supply code and clause 7 and clause 8 Appendix 'A' Regulations of 2014 – time period for change of tariff category from the date of application is second billing cycle from 14-05-2015 i.e. from 01-07-2015 applicant is entitled for compensation of Rs.100/- per week and on part thereof delay i.e. till date of change of tariff.

Issue-4: Whether applicant is entitle for refund of extra charges (difference between HT-I/C –HT-V – HT- Agriculture) recovered by N.A. from 01-08-2009 under section 62(6) of the Electricity Act 2003 – Yes

While dealing with issue No.1 it is concluded after considering the Govt. policy facts of the applicant, various tariff regulation since 2009 and onwards, MERC and Appellate Tribunal for Electricity in the identical cases as well as of

CGRF Nagpur, it is proved that applicant comes under HT-I/C to HT-V – HT-Agriculture and applicant rightly demanded the refund of difference.

On the plain reading Section 62(6) of the Electricity Act 2003 make it mandatory to the Distribution Licensee to refund extra charges recovered exceeding the tariff determined, shall be recoverable by the person who has paid charges, alongwith interest at Bank rate without, prejudice any other liabilities incurred by the Licensee.

Applicant is claiming refund since 01-08-2009 and stated that non-applicant is committing wrong since tariff order of 2009 effective from 01-08-2009. Applicant was not aware of above changes in tariff and it was total responsibility of non-applicant to apply the proper tariff for which non-applicant failed since 01-08-2009.

Applicant relied on the judgment of H'ble Supreme Court of India in Civil Appeal No.5151-5152 of 2008, in case of union of India V/s. Tarsen Singh on issue of limitation and cause of action which was decided in favour of Respondent (original Petitioner). Apex Court laid down The principles underlying continuing wrong and recurring / successive wrongs which squarely applicable to the present application. The para of judgment is quoted in page 59 of the application.

As per H'ble Apex Court order, it is clear that wrong doing by the non-applicant by changing wrong tariff every month amounts to recurring / successive wrongs which occur every month and each wrong give rise to a distinct and separate cause of action. Hence the appeal is not barred by time limitation of cause Action.

As discussed above in case before Electricity Ombudsman Nagpur in review petition no.19/2014 decided on 29-10-2014 of M/s Sunder Rolling Mills

Pvt.Ltd. V/s. S.E., MSEDCL, Nagpur UC, Nagpur has discussed further issue of limitation and cause of action at para 12,13,14 and held that the law laid down in the said case and facts in the present case also are identical & is applicable.

On plain reading of “section 62(6) of the Electricity Act 2003 if the licensee recovers of price or charges exceeding the tariff shall be recoverable by the person who has paid such price or charge along with interest equivalent to the Bank rate without prejudice to any other liability incurred by the licensee” and there is no ambiguity as to refund of extra charge recovered by non-applicant since 01-08-2009.

Hence the applicant is entitle for refund of extra charge (Difference between HT-IC & HT-V HT (Agriculture) from 01-08-2009 with interest as per regulation & provision of section 62(6) of the Electricity Act 2003.

Issue-5: Whether the supplementary bill raised by non-applicant vide letter no.SE/O&M/NUC/HT/Acctt/001907 dated 25-04-2016 alongwith bill for the period August-2012 to March-2016 and disconnection notice No.2884 & 2887(8) dated 22-07-2016 is correct and legal? No

Applicant stated that supplementary bill dated 25-04-2016 alongwith bill for the period August-2012 to March-2016 is arbitrary and illegal & requested the forum to quash and set aside

Applicant relied on the order of MERC in case No.24/2001 passed on 11-02-2003 as below in para No.23.

“No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of

natural justice And the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the commission will have to be sought as any reclassification of consumer directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases. Recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective.”

It is necessary to mention that H'ble Electricity Ombudsman Nagpur in representation No.24/2014 ordered on 11-12-2014, also relied on above order of MERC in case No.24/2001 on 11-02-2003. The Electricity Ombudsman also held that retrospectively recovery can not be raised by way of supplementary bill.

Hence supplementary bill dated 25-04-2016 for the period August-2012 to March-2016 as well as disconnection notice No.2884 and 2887(8) issued by non-applicant dated 22-06-2016 deserves to be quash and set aside as it is illegal and arbitrary.

It will not be out of contest to mention that in representation no.24/2014 (as above), the respondent by Shri M.S.Dhoble, Executive Engineer(Adm.) is the same person as non-applicant respondent was fully aware of legal position of the retrospective recovery still by violating the orders of Electricity Ombudsman Nagpur & MERC, Mumbai effected retrospective recovery of the applicant. This shows total disregard towards the order of Electricity Ombudsman as well as

MERC. This attempt of non-applicant appears to be arbitrary with a sole intention to harass the officials of applicant with its ulterior motive against the settle principles of law.

Issue-6: Whether the applicant is entitle for compensation for harassment & mental agony and cost for pursuing the litigation? Yes

Applicant in prayer requested forum to grant compensation for harassment and mental agony Rs.100000/- & cost of Rs.10000/- . – In view of the above observations, applicant proved his case that non change of tariff as per SOP standard & issue of illegal supplementary bill as well as disconnection notice issued can be serious harassment.

Applicant is pursuing his application before S.E. (NUC) O&M Nagpur & IGRC as well as before CGRF since 14-05-2015. Hence for no fault of applicant & its officials are suffering. Hence I am of the view that as per provision 8.2(c) of MERC (CGRF & EO) Regulations 2006 granting Rs.10000/- aggregate for compensation & cost will meet the end of Justice. The amount of compensation shall be recovered from the salary of concerned responsible officer by conducting Departmental enquiry. Because there are serious lapses on his part as organization MSEDCL is no way responsible.

This above observation are by applying ratio laid down by Supreme Court, India in Lucknow Development authority V/s. Shri M.K.Gupta dated 07-08-2007.

Hence the following order.

ORDER

1. Application is partly allowed.
2. Non-applicant is directed to change the tariff category of applicant from

HT-IC to HT-V-HT-Agriculture w.e.from 01-08-2009.

3. The order of IGRC is quashed & set aside.
4. N.A. is directed to pay SOP compensation @ Rs.100/- per week or part there of from 1-07-2015 to till actual change of tariff category in the bill.
5. N.A. is directed to refund amount of tariff difference i.e. between HT-IC to HT-V HT-Agriculture with effect from 01-08-2009 with interest a per section 62(6) of The Electricity Act 2003.
6. N.A. is directed to cancel the supplementary bills as well as notice of disconnections issued to the applicant.
7. N.A. is directed to pay Rs.10000/- towards compensation for harassment mental agony to the applicant & its officials.
8. The compliance of this order shall be done within 45 days.
9. Office is directed to send the copies of this order to M.D. MSEDCL Mumbai as well as Chief Engineer (NUZ) Nagpur for information.”

38. **Concluding findings of majority view of Hon. Chairperson and Hon. Member/ Secretary .**

For these reasons we hold that grievance application is hopelessly barred by limitation, untenable at law and deserves to be dismissed. Therefore in the opinion of the majority view grievance application deserves to be dismissed.

39. Hence Forum proceed to pass the following order.

ORDER

- 1) Grievance application is dismissed.
- 2) Interim order dt. 18.07.2016 is hereby vacated.

Sd/-
(N.V.Bansod)
MEMBER

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

sd/-
(Shivajirao S. Patil),
CHAIRMAN

