

aaaaMaharashtra State Electricity Distribution Co. Ltd.'s  
Consumer Grievance Redressal Forum  
Nagpur Urban Zone, Nagpur

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Case No. CGRF(NUZ)/131/2015

Applicant : M/s. Sharda Shree Ispat Ltd.,  
Plot No. E-12,  
MIDC, Butibori,  
Nagpur.

Non-applicant : Nodal Officer,  
The Superintending Engineer,  
(Distribution Franchisee),  
MSEDCL,  
NAGPUR.

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Applicant :- Shri Sumit Goenka

Respondent by 1) Dy. E.E., NUZ, MSEDCL, Nagpur.

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

2) Adv. Subhash Jichkar  
Member.

3) Shri Anil Shrivastava,  
Member / Secretary.

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ORDER PASSED ON 28..9.2015.

1. The applicant filed present grievance application before this Forum on 17.8.2015 under Regulation 6.4 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 consumer of M.S.E.D.C.L. connected on 33 kV. Applicant has a Contract Demand of 5000 kVA. Applicant applied for supply at 33 kV as per his application Dt. 13.11.2006 to Superintending Engineer (Nagpur Rural Circle), MSEDCL, Nagpur for non continuous industry for a contract demand of 2200 kVA. Applicant's application was sanctioned as per letter dated 17.5.2007. Applicant's supply was released on 23.1.2008. Applicant applied for enhancement of contract demand from 2200 kVA to 3500 kVA as non continuous process industry on 7.11.2009. Applicant's application was sanctioned on 2.3.2010. Applicant again applied for enhancement of contract demand on 25.10.2010. Applicant's demand was sanctioned on 23.2.2011.

3. Applicant further submitted that Commission issued tariff order dt. 18.5.2007, in Case No. 65/2006, applicable from May 2007. In this tariff order, non express feeder tariff was at higher rate i.e. 3.40 kWh compared to express feeder tariff which was 3.10 kWh. Commission issued another tariff order on 20.6.2008 applicable from the month of June 2008 in case No. 72/2007 and revised the applicable tariff for industries. In this

tariff order, Commission specified tariff for express feeder consumers as Rs. 4.30 kWh and for non express feeder consumers as 3.95 kWh. Applicant was charged HT – I tariff applicable for express feeder as per tariff order of Commission applicable from May 2007 and applicant regularly paid energy bills at express feeder tariff till May 2008. Thereafter Commission revised the tariff applicable from June 2008 in which express feeder tariff at higher rate compared to non express feeder tariff. Applicant is regularly paying higher tariff at express feeder rate since then. Month wise statement for energy consumption and rate charged by M.S.E.D.C.L. from the month of February 2007 with calculation of excess amount charged by M.S.E.D.C.L. is totaling to Rs. 1,98,28,816.08 (Rs. One Crore Ninety Eight Lacs Twenty Eight Thousand Eight Hundred Sixteen & Ps. Eight) only, till January 2013.

4. Applicant further submitted that in the tariff order of Commission applicable from June 2008 and further in the tariff order Dt. 12.9.2010 applicable from September 2010, it is mentioned that *“Only HT Industries connected on express feeders and demanding continuous supply will be deemed as HT Continuous Industries and given continuous supply, while all other HT industries will be deemed as HT non continuous Industries”*. M.S.E.D.C.L. issued a circular No. 88 on 26.9.2008. As per tariff order of Commission, definition of express feeder,

and circular No. 88 of M.S.E.D.C.L. applicant should be charged on non express feeder tariff. M.S.E.D.C.L. charged express feeder tariff to the applicant since beginning. Hence applicant applied change of tariff on 22.8.2012. Chief Engineer (Com.) issued letter Dt. 11.3.2013 to Superintending Engineer, MSEDCL, to change the tariff category of the applicant from continuous to non continuous. Superintending Engineer asked the applicant to submit undertaking on Rs. 200 Stamp Paper, accepting the conditions mentioned in the letter of Chief Engineer (Com.). Chief Engineer (Com.) M.S.E.D.C.L. communicated to Superintending Engineer, MSEDCL as per letter Dt. 11.3.2013 by providing approval on applicants request but putting the date of approval as 27.2.2013 and further said that effect of approval will be given from one month after the date of receipt of application at Circle Office / Head Office. It is further said in the letter that consent of the consumer if any will be obtained before change in tariff category. Applicant submitted his undertaking with enclosing letter dated 5.4.2013 accepting some illegal conditions, under pressure of M.S.E.D.C.L. and further pressure of changing the tariff category. The applicant was forced to accept that he will bear all expenses incurred towards electrical infrastructure work as per DDF scheme of M.S.E.D.C.L.

5. Applicant further submitted that M.S.E.D.C.L. changed the tariff category of the applicant from the month of

May 2013, i.e. after 9 months from the date of application. Applicant filed his grievance application to I.G.R.C. on 21.7.2014, but I.G.R.C. did not pass any order for a period of 8 months and therefore applicant filed present grievance application. Applicant claimed relief for issuance of directions to M.S.E.D.C.L. to change tariff category of the applicant from the month of August 2012 and to refund excess amount charged along with interest and further for issuance of directions to M.S.E.D.C.L. to change the tariff of the applicant to non continuous (non express feeder) and revise all the energy bills of the applicant from February 2008 till the date of considering and applying non express feeder tariff in the light of the fact that consumer's application was for non continuous tariff so also claimed interest on excess amount.

6. Non applicant denied applicant's case by filing reply Dated 10.9.2015. It is submitted that applicant is HT Consumer of non applicant connected on 33 kV with present connected load 13000 kVA and contract demand 7000 kVA connected on 23.1.2008. The tariff category of consumer was 55 HT-IC i.e. industrial tariff with continuous load at the time of connection but presently it is 56 HT I Non continuous i.e. consumer is presently billed with industrial tariff with non continuous load since May 2013. Consumer is having HT connection on 33 kV connected on Dt. 23.1.2008 with contract demand 2200 kVA

connected on 33 kV KEC feeder from 220 kV Butibori S/s. The contract demand of the consumer was increased to 3500 kVA on 15.6.2010. and later from 3500 kVA to 5000 kVA on Dt. 29.3.2012. Finally contract demand was increased to 7000 kVA on 31.5.2015. It is noteworthy that 33 kVA KEC feeder was an express feeder which caters uninterrupted power supply even on staggering holidays at the time of connection of the applicant.

7. Non applicant further submitted that Hon'ble MERC tariff order in case No. 54/2005 Dt. 17.1.2007 effective from 1.10.2007, two categories of HT-I continuous industries and HT-I non continuous industries were introduced by Hon'ble MERC and KEC feeder being the express feeder the consumer M/s. Sharda Shree Ispat Ltd. was billed as per tariff category HT-I continuous industry from 23.1.2008. The consumer was well aware of the fact that 33 kV KEC feeder is express feeder and at the time of application applicant had given undertaking **“To carry out the work of execution of power supply to our facility from existing power system under your supervision”** and said undertaking is enclosed with reply at Annexure 'A'. All other consumers connected on this feeder were billed as per tariff category HT-I continuous industries. Consumer himself carried out 33 kV line erection work for new power supply to their unit vide Annexure 'B'. It is noteworthy that Hon'ble MERC tariff order effective from 1.10.2006 and 1.5.2007. The rate for HT-I continuous

industries was less than HT-I non continuous industries vide Annexure 'C'. The consumer did not raise any objection at that time.

8. Non applicant further submitted that Hon'ble MERC tariff order Dt. 20.6.2008 in case No. 72/2007 effective from 1.6.2008 vide Annexure 'D'. It was stated that "only HT industries connected on express feeder and demanding continuous supply will be deemed as HT Continuous industries and given continuous supply while all other HT industrial consumers will be deemed as HT non continuous industries". But in the clarificatory order by Hon'ble MERC Dt. 12.9.2008 vide Annexure E', it is clarified that "consumer getting supply from express feeder must exercise his choice between continuous and non continuous supply only once in a year within first month after issue of tariff order for the relevant tariff period. In the present instance consumer may be given 1 month time from the date of issue of this order for exercising his choice. In case such choice is not exercised within stipulated period then the existing categorization will be continued. It is clear from the clarificatory order that if consumer was to change his categorization from continuous to non continuous the consumer was to give his choice between continuous / non continuous within 1 month from the date of issue of clarificatory order Dt. 22.7.2008 or related M.S.E.D.C.L. circular No. 88 Dt. 26.8.2008, but consumer did not

submit his choice and hence was continued to be billed as per existing HT-I continuous industries tariff. Thereafter MERC tariff order Dt. 12.9.2010 in case No. 111 of 2009 came into effect from 1.9.2010. The consumer did not submit his choice between continuous / non continuous tariff.

9. Non applicant further submitted that tariff order for the period 2012-13 was issued by MERC on 16.8.2012 and consumer submitted his option for non express feeder supply on 22.8.2012. Proposal for change in tariff was sent to corporate office and it was approved by Corporate office on 6.3.2013. Approval was with the condition of submission of notarized undertaking on Rs. 200/- stamp paper. The consumer submitted his undertaking on 5.4.2013 and therefore consumers tariff is changed from continuous to non continuous from May 2013 onwards giving effect to the consumer as non continuous industry from 1.10.2012 to 30.4.2013 i.e. as per the approval received from corporate office vide Annexure 'I', 'J' & 'K'. The consumer has argued that feeder is not express feeder and has applied the definition of "dedicated distribution facility" to express feeder. Above consumer has rightly charged with HT-I C (HT industry express feeder) tariff category till consumer submitted option for non continuous industrial tariff on 22.8.2012 after MERC tariff order Dt. 16.8.2012.



10. Non applicant further submitted that MERC (Standard of Performance, Period of giving supply & determination of Compensation) Regulations 2014 has come into force w.e.f. 20.5.2014. Any condition / definition mentioned in these regulations can not be implied before its effective date. Consumer is rightly charged as HT-I C (HT Industry express feeder) tariff category till consumer submitted option for non continuous industrial tariff on 22.8.2012 after MERC tariff order Dt. 16.8.2012. On submitting his option the consumers tariff is changed from continuous to non continuous from May 2013 onwards giving effect to the consumer as non continuous industry as per the approval received from Corporate office and MERC regulations. No excess amount is paid by the consumer to M.S.E.D.C.L. It is submitted that grievance application deserves to be dismissed.

11. Forum heard arguments of both the sides and perused record.

12. It is noteworthy that applicant consumer is having H.T. Connection on 33 kV was connected on Dt. 23.1.2008 with contract demand of 2200 kVA connected on 33 kV KEC feeder from 220 kV butibori S/s. Contract demand of the applicant was increased to 3500 kVA and later to 5000 kVA on 29.3.2012. Finally contract demand was increased to 7000 kVA on

31.5.2015. It is pertinent to note that 33 kV KEC feeder was an express feeder which caters uninterrupted power supply even on staggering holidays at the time of connection of the applicant.

13. Consumer was well aware of the fact that 33 kV KEC feeder is express feeder and at the time of application, applicant gave undertaking **“To carry out the work of execution of power supply to our facility from existing power system under your supervision”**. Copy of the same is enclosed with reply at Annexure 'A'. All other consumers connected on this feeder were billed as per tariff category HT-I continuous industry. Consumer himself carried out 33 kV line erection work for new power supply to their unit. Copy of the same is enclosed with reply at Annexure 'B'. It is noteworthy that in the MERC tariff order effective from 1.10.2006 and 1.5.2007 the rate for HT-I continuous industries was less than HT-I non continuous industry vide Annexure 'C'. Consumer did not raise any objection at that time.

14. In MERC tariff order dated 20.6.2008 in case No. 72/2007 effective from 1.6.2008 vide Annexure 'D' it was clarified that *“Only HT Industries connected on express feeder and demanding continuous supply will be deemed as HT Continuous industry and given continuous supply, while all other HT Industrial consumers will be deemed as HT non continuous*

*industries*". But in clarificatory order by Hon'ble MERC Dt. 12.9.2008 vide Annexure 'B' it is clarified that "Consumer getting supply on express feeder may exercise his choice between continuous to non continuous only once in a year within first month after issue of tariff order for the relevant tariff period". In the present instance, consumer may be given one month time from the date of issue of this order for exercising his choice. In case such choice is not exercised within stipulated time, then existing categorization will be continued. It is clear from the clarificatory order that if the consumer was to change his categorization from continuous to non continuous, the consumer has to give his choice between continuous / non continuous within one month from the date of issue of clarificatory order Dt. 12.9.2008 and related M.S.E.D.C.L's circular No. 88 Dt. 26.9.2008. But the consumer did not submit his choice and hence continued to be billed as per existing HT-I C industries tariff. Thereafter tariff order Dt. 12.9.2010 in case No. 111/09 came in effect from 1.9.2010 vide Annexure 'F'. The consumer did not submit his choice between continuous to non continuous. For this purpose, we place our reliance on the authority of Hon'ble Electricity Ombudsman Nagpur.

15. It is noteworthy that in similar case **M/s. Hardoli Paper Mills Vs. Superintending Engineer (NRC), M.S.E.D.C.L. Nagpur, representation No. 116/13, decided on 9.1.2014, Hon'ble**

**Electricity Ombudsman Nagpur** has delivered very important judgement and said ruling of Hon'ble Electricity Ombudsman applies to the case in hand squarely. In this authority, Hon'ble Electricity Ombudsman Nagpur held as under : -

*“The Commission is of the view that MSEDCL should not ignore the benefit of load relief that could be achieved, in case certain HT-I continuous industries who are presently not subjected to load shedding, voluntarily agree to one day staggering like other industries located in MIDC areas. Hence the HT industrial consumer connected on Express Feeder should be given the option to select between continuous and non continuous type of supply and there is no justification for removing the clause “demanding continuous supply” from the definition of continuous category. However, it is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply only once in the year, within the first month after the issue of the Tariff Order for the relevant Tariff period, in the present instance, the consumer may be given one month’s time from the date of issue of this order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.* The clarificatory order dated 12.9.2008 was followed by the Commercial Circular dated 26.9.2008.

16. While insisting for change in tariff from HT-I continuous to non continuous, the appellant has put great emphasis on the above clarificatory order which was followed by Commercial Circular No. 88. But the appellant is forgetting that the said clarificatory order dated 12.9.2008 as well as Commercial Circular No. 88 are restricted to the detailed Tariff Order dated 20.6.2008 in Case No. 72/2007. The said tariff order was in existence from 1.6.2008 till 31.7.2009 because tariff order dated 17.8.2009 in Case No. 116/2008 became applicable w.e.f. 1.8.2009. The option to change the Tariff category from HT-I continuous to non continuous industries was not there in the subsequent Tariff Orders in Case No. 116/2008, 111/2009 and 19/2012. The clarificatory order dated 12.9.2008 in Case No. 44/2008 will not automatically apply to the subsequent Tariff Orders. Obviously the appellant could not give its choice for change of tariff category from HT-I continuous to non continuous industries. Thus the respondent was perfectly justified in not entertaining the said application of the applicant and continuing to charge HT-I-C tariff to the appellant.

17. Facts of the cited ruling and facts of the present case are similar and identical and therefore this ruling is squarely applicable to the case in hand. Relying on the authorities cited

supra, we hold that grievance application deserves to be dismissed.

18. Hon'ble Electricity Ombudsman Nagpur has discussed this issue in detail and passed order Dt. 9.1.2014 in representation No. 116/13. Hon'ble Electricity Ombudsman has concluded that clarification and choice of change of tariff provided in case No. 44/08 is restricted to tariff order dated 20.6.2008 only, passed in case No. 72/07 as the said choice is not provided in subsequent tariff order. It is pertinent to note that though the said order is challenged in Writ Petition No. 2389/14, Hon'ble High Court has not granted any interim relief nor quashed the said order and therefore said order is still in force, valid in the eyes of law and undoubtedly has a binding legal force. Relying on the authority cited supra we hold that grievance application deserves to be dismissed.

19. Tariff order for the period 2012-13 was issued by Hon'ble MERC on 16.8.2012 and consumer submitted his option for non express feeder supply on 22.8.2012. Proposal for change in tariff was sent to Corporate office of M.S.E.D.C.L. and it was approved by Corporate Office as per letter dated 6.3.2013 vide Annexure 'G'. The approval was with the condition of submission of notarized undertaking by the consumer on stamp paper of Rs. 200/-. The consumer submitted undertaking on 5.4.2013 vide

Annexure 'H' and therefore consumers tariff is changed from continuous to non continuous from May 2013 onwards giving effect to the consumer as non continuous industries from 1.10.2012 to 30.4.2013 as per approval received from Corporate Office vide Annexure "T", 'J', 'K'.

20. It is pertinent to note that along with reply of the non applicant Dt. 10.9.2015, important documents are produced on record vide Annexure 'A' to Annexure 'K'. On perusal of these important documents, it is crystal clear that there is no force in the present grievance application and it is merely an attempt to extract big amount i.e. more than Rs. 19 lacs by misleading the relevant authorities and misinterpreting the legal provisions and regulations but it is absolutely not permissible at law. Nobody can take disadvantage of regulations by misinterpreting regulations to extract money from MSEDCL.

21. It is an admitted fact that consumer is presently billed as industrial tariff with non continuous load since May 2013. Consumer approached to this Forum for issuance of directions to M.S.E.D.C.L. to revise all energy bills of the applicant from 23.1.2008 till April 2013, considering and applying non express feeder tariff and for refund of excess amount paid by the applicant along with interest total amount Rs. 1901765.72 (Nineteen Lacs One Thousand Seven Hundred Sixty Five & Ps.

Seventy Two) only. Therefore important point to consider is whether present grievance application is within limitation as refund is claimed since February 2008. According to regulation 6.6 of the said regulations, "Forum shall not admit any grievance unless it is filed within two years from the date on which cause of action has arisen". As per pleadings & prayer of the applicant in grievance application, cause of action arose on 23.1.2008 and therefore applicant ought to have filed grievance application on or before 23.1.2010. But present grievance application is filed on 17.8.2015 and therefore it is hopelessly barred by limitation. It is an admitted fact that consumer is presently billed with industrial tariff with non continuous load since May 2013. Therefore at least applicant ought to have filed grievance application within two years from May 2013 i.e. on or before May 2015 but that is also not done and grievance application is filed on 17.8.2015. There is nothing on record to show that applicant was prevented by sufficient cause from filing grievance application since 2008. Applicant is also not illiterate person, but it is a reputed company named & styled as M/s. Sharda Shree Ispat Ltd. Applicant had also engaged Learned Representative. Therefore it was well within the knowledge of the applicant about limitation provisions. But even then since 2008 applicant did not file grievance application for a period of 7 years and hence matter is barred by limitation.



22. On behalf of the applicant it is argued that there is continuous cause of action and therefore there is no limitation. However, we do not agree with this argument. In entire MERC (CGRF & E.O.) Regulations 2006, there is no concept of “Continuous Cause of Action”, but regulation 6.6 is mandatory. Therefore we are bound by the provisions of regulation 6.6. The applicant relied on Judgement of Hon’ble Electricity Ombudsman, Nagpur, in review petition No. 2/14 in representation No. 19/14 M/s. Sunder Rolling Pvt. Ltd. Vs. Superintending Engineer, decided on 29.10.2014, a petition under regulation 19 of MERC (CGRF & EO) Regulations 2006 for review of order of Electricity Ombudsman Dt 15.4.2014 in representation No. 19/14. However, it is noteworthy that applicant did not produce original order passed by Hon’ble Electricity Ombudsman in representation No. 19/14, which was decided on 15.4.2015. Therefore this Forum had no opportunity to peruse the said order Dt. 15.4.2014 in representation No. 19/14. However, we have carefully perused order passed by Hon’ble Electricity Ombudsman Nagpur in review petition No. 2/14 in representation No. 19/14 decided on 29.10.2014. However, facts of that matter are totally different and distinguishable from the facts of the case in hand. As facts are different & distinguishable, therefore said authority is not applicable to the case in hand.

23. For these reasons, we are of considered opinion that grievance application deserves to be dismissed.

24. Resultantly Forum proceeds to pass following order :-

### ORDER

- 1) Grievance application dismissed.

Sd/-  
(Anil Shrivastava)  
MEMBER/  
SECRETARY

Sd/-  
(Adv. Subhash Jichkar)  
MEMBER

Sd/-  
(Shivajirao S. Patil),  
IRMAN