

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

Case No. CGRF(NUZ)/043/2008

Applicant : M/s. KSL Realty & Infrastructure Ltd.,
Plot No. 101/1, Survey no. 101,
Walkar Road,
Empress Mill Gate No. 4,
NAGPUR – 440 018.

Non-applicant : MSEDCL represented by
Superintending Engineer,
NUC,
Nagpur.

Quorum Present : 1) Shri S.D. Jahagirdar,
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

3) Shri S.J. Bhargawa
Executive Engineer &
Member Secretary,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 19.09.2008)

This grievance application is filed on 12.08.2008 under
Regulation 6.5 of the Maharashtra Electricity Regulatory Commission
(Consumer Grievance Redressal Forum & Electricity Ombudsman)

Regulations, 2006 here-in-after referred-to-as the said Regulations.

The grievance is entertained under Regulation 6.5 since the applicant satisfied the Forum that prima-facie, the non-applicant has threatened to disconnect his electricity connection, and has contravened provisions of the Electricity Act, 2003 and of the MERC's Regulations and tariff orders.

The grievance of the applicant is in respect of allegedly illegal energy consumption assessment bill for differential amount of Rs.52,89,561/- pertaining to the period from October, 2006 to February, 2008 by application of wrong tariff rate. His grievance is also in respect of similar illegal assessment bill amounting to Rs.71,99,041 for the period from March 2008 to May, 2008.

The applicant had also requested to issue an ad-interim order under Regulation 8.3 of the said Regulations restraining the licensee from disconnecting the applicant's power supply till the final decision by this Forum in view of the non-applicant's notice threatening disconnection of his power supply.

The applicant has prayed for grant of following reliefs.

- 1) Admit the applicant's case under Regulations 6.5 of the said Regulations since the distribution licensee has threatened to disconnect the applicant's power supply and it has contravened provisions of the Electricity Act, 2003 and of Maharashtra Electricity Regulatory Commission (in short, the Commission) Regulations and also its tariff orders.
- 2) Issue ad-interim order under Regulation 8.3 of the said Regulations restraining the licensee from disconnecting the

applicant's power supply till the final disposed of the grievance application.

- 3) Issue a final order and set aside the illegal assessment bill amounting to Rs.52,89,561/- included in the current bill amount for June 2008 inclusive of delayed payment charges of Rs. 1,03,716=87.
- 4) Issue a final order and set aside similar illegal assessment bill for the period from March 2008 upto June, 2008.

The applicant is having HT power supply at 11KV with a sanctioned contract demand of 100 KVA having consumer no. 41001-900-049-8. MSEDCL issued revised H.T. energy bill for the period from October 2006 to February, 2008 to the tune of Rs.49,00,183=44. This amount has been included as debit adjustment amount in the applicant's energy bill for the month of June 2008. In this respect, the S.E. NUC in his letter, being letter no. 422 dated 22.07.2008, said that his office has prepared a revised bill to the tune of Rs.49,00,183=44 for the period from October 2006 to February 2008 under tariff code LT VII applicable for temporary connection for construction activities and the same has been sent to the applicant, vide assessment bill dated 30.05.2008. The applicant was also informed by the Superintending Engineer that the revised energy bill for the months of March 2008 to June 2008 under tariff code HT-Temporary applicable for temporary connection for construction purposes will be prepared manually very soon and the same would be forwarded to the applicant in due course and also that the applicant's monthly energy bills would accordingly be issued as per revised tariff w.e.f. 01.06.2008. The applicant submitted his protest vide his letter dated 23.07.2008 and said that the

calculations submitted in the revised bill dated 22.07.2008 are totally baseless since the tariff meant for LT-VII category was not applicable to the applicant as he is availing supply at HT. Despite this protest, the non-applicant issued a 15 days' notice under Section 56 (1) of the Electricity Act, 2003 on 02.08.2008 asking the applicant to make payment of Rs.52,89,561/- included in the bill amount for June, 2008 amounting to Rs.2,85,660=24 against application of tariff code LT-VII Temporary for construction purpose inclusive of delayed payment charges of Rs.1,03,716=84/- failing which the applicant's connection would be disconnected. According to the applicant, the non-applicant's action is illegal and the hence, the present grievance application.

The matter regarding interim relief sought by the applicant was heard on 16.08.2008 and 18.08.2008. This Forum on hearing both the parties on this limited issue passed a detailed Interim order on 20.08.2008 under Regulation 8.3 of the said Regulations directing the non-applicant not to disconnect the applicant's power supply till the present grievance application is finally decided. The Interim order issued is a part of record of this case.

The regular grievance application was subsequently finally heard on 02.09.2008.

The applicant's case was presented by his nominated representative one Shri R.B. Goenka while the Superintending Engineer, NUC, MSEDCL, Nagpur represented the non-applicant Company.

The applicant's representative has contended that MSEDCL intentionally violated the Commission's tariff orders

and issued un-justified and illegal energy bills for the period from October, 2006 till February, 2008 by wrongly applying the LT VII Temporary tariff rate. The applicant was previously billed in this period by applying the HT VI tariff applicable to commercial complex as per Commission's tariff order applicable from 01.05.2007. The applicant has also made payment of all his energy bills promptly without raising any dispute though the tariff for HT construction power has not been decided by the Commission and the energy charges meant for commercial complex i.e. Rs.150/- per KVA demand charges and Rs.4.5 per KWH unit as consumption charges were paid previously against this background. However, MSEDCL again erroneously issued revised HT energy bill for the differential amount for the period October, 2006 to February 2008 to the tune of Rs.49,00,183=44. While explaining the details of revised bill, the non-applicant said in his letter 22.07.2008 that the monthly energy bills were issued under tariff code 61 – HT – VI applicable for commercial complex and payment for the same was made promptly by the applicant. It is further said that as directed by CE (Commercial) vide letter dated 17.09.2007 as well as Dy. E.E. Flying Squad's letter dated 19.10.2007, appropriate billing to the consumer for construction purpose was required to be done under respective tariff i.e. LT –VII Temporary category. Accordingly, the office of S.E. issued a revised energy bill for differential amount to the tune of Rs.49,00,183/- for the period October 2006 upto February, 2008 under tariff code "LT-VII Temporary connection for construction activities." Since the applicant's supply is connected at HT and since it is not a

temporary supply as defined in the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 hereinafter referred to as the Supply Code Regulations, the applicant's representative strongly contended that the tariff meant for LT-VII Temporary category is not at all applicable to the applicant and consequently illegal bills came to be issued.

He referred to definition of words "Temporary Supply" made in Regulation 2.1 (v) of the Supply Code Regulations and strongly argued that Temporary Supply means supply of electricity for a temporary period not exceeding two years. He further explained that the applicant's power supply has been sanctioned for a period exceeding two years. He cited the agreements executed by the applicant with MSEDCL vide agreement dated 10.09.2007 and another dated 18.02.2008 copies of which have been produced on record by him. He also stated that the tariff that was made applicable as per agreements was of HT-VI category vide clause 8 (a) of the two agreements.

Elaborating further as to how the non-applicant has erred in holding that LT VII Temporary category tariff rate is applicable to the applicant, the applicant's representative referred to the Commission's clarificatory order dated 24.08.2007 passed in case no. 26/2007 and 65/2006. The Commission in this order at page 9 has clarified that the tariff applicable for LT-VII category for temporary connection will be applicable also in the event of extending supply to consumers availing temporary supply at H.T. voltages also. Previously, there was no tariff category like HT temporary consumers but as per Commission's clarification as stated above, LT-VII Temporary connection category tariff was made applicable to consumers availing

temporary supply at HT voltages. Here again, stress was laid by the applicant on the words “temporary supply” as defined in the Supply Code Regulations.

He further stated that the non-applicant has also not stated any where that the applicant was sanctioned power supply for a period not exceeding two years. Hence, according to him, the application of LT –VII tariff Temporary category to the present applicant who is availing permanent supply at HT level and who is not a HT temporary supply category consumer is unjust, improper and illegal.

He has also referred to definition of LT (low tension) provided in the Supply Code Regulations and according to these Regulations, LT means all voltages other than those defined as “high” or “extra high” voltage under clause (av) of sub-rule (1) of Rule 2 of the Indian Electricity Rules, 1956 and corresponding voltage classifications as may be specified in accordance with clause (c) of sub-section (2) of Section 185 of the Act. The applicant’s supply is connected at 11 KV and as defined above, it comes under high voltage i.e. HT and not LT. Hence, only corresponding HT tariff is applicable to the applicant.

He added that the Commission’s clarificatory order dated 24.07.2008 is having retrospective effect w.e.f. 01.05.2008 as clearly stated by the Commission. Hence, the clarifications issued in the order cannot be made applicable to the applicant’s billing already done prior to 01.05.2006. He also states in the first place that revision of billing done by the non-applicant from October, 2006 to 30.04.2007 was not at all in tune with the Commission’s clarificatory order. Asserting this point further, he vehemently argued that the non-applicant has not only

wrongly revised the applicant's energy bills w.e.f. 01.05.2007 by application of wrong tariff but it has also miserably erred in making applicable the revised tariff meant for LT-VII Temporary category to billing done for period even previous to 01.05.2007. This, by no stretch of imagination, is sustainable in the eyes of law.

On the point of assessment done under Section 126 of the Electricity Act, 2003 on 28.06.2007 for the period from October, 2006 to March 2007, the applicant's representative submitted that the provisional assessment bill amount of Rs.23,19,684=75 was already paid by him on 06.09.2007 and thereupon, his unauthorized use of electricity stood finally regularized. The non-applicant is not authorized to revise this bill again by making applicable tariff meant for LT-VII Temporary category. According to him, the issue of assessment towards unauthorised use of electricity for the past period of six months from October, 2006 to March 2007 cannot now be reopened by the non-applicant and otherwise also, differential amount for this period cannot be claimed by applying a wrong and non-existent tariff rate. The revised bill amount of Rs.49,00,183=44 covers the revised assessment amount towards unauthorized use of electricity pertaining to this period of six months which, according to him, is not proper and legal. According to him, this amount of Rs.49,00,183=44 has wrongly been added as debit adjustment amount in the energy bill for the month of June, 2008.

He further stated that the Commission has revised the tariff applicable from 1st June 2008 and MSEDCL issued energy bill for the month of June 2008 at HT-VI tariff with revised rate meant for Commercial complex i.e. Rs. 125/- per KVA / per month and energy

charges @ Rs.5.25 KWH. The applicant has already accepted the HT-VI tariff that was made applicable to him and this was the highest tariff meant for HT consumers. The applicant was also charged additional supply charges which were not applicable to HT-VI category. Still the applicant paid these charges.

He continued to submit that the applicant paid the energy bill under protest equivalent to average electricity charges paid by the him during preceding six months as per Section 56 (1) (b) of the Electricity Act, 2003. The applicant requested MSEDCL to accept the payment and not to disconnect the supply as per the provisions of the Act till the dispute is resolved. In spite of making average payment as per provisions of Section 56 (1) (b), MSEDCL first issued a power disconnection notice for 7 days on 29.07.2008 under sub-section (1) of section 24 of the Indian Electricity Act, 1910 followed by a second disconnection notice of 15 days under Section 56 of the Electricity Act, 2003 on 02.08.2008 stating there-in that the previous notice may be ignored since it was issued inadvertently. MSEDCL requested the applicant to make payment amounting to Rs.52,89,561/- which included current bill amount for June, 2008 of Rs.2,85,660=24, debit bill adjustment amount of revised bill issued for the period October, 2006 to February, 2008 against application of tariff code LT-II temporary connection for construction purpose amounting to Rs.49,00,183.44 and delayed payment charges amounting to Rs.1,03,716=87. Since the applicant was threatened with disconnection of power, he approached this Forum under Regulation 8.3 of the said Regulations requesting for passing an interim order there-by restraining the non-applicant from disconnecting the power supply. The

Forum, thereupon, heard both the parties and passed a detailed interim order on 20.08.2008 holding that the requirement of Regulation 8.3 is prima-facie satisfied and further directing the non-applicant not to disconnect the power supply till this grievance application is finally decided.

The applicant's representative also referred to another assessment bill issued by the non-applicant for the period from March, 2008 upto May 2008 based on tariff applicable from 1st June, 2008 and argued that the assessment bill of Rs.71,99,041=24 for the period March 2008 to June 2008 is illegal since again, tariff meant for LT-VII Temporary category has wrongly been applied to this bill. This bill dated 11.08.2008 shows a differential amount of Rs.12,49,517/- as recoverable from the applicant. He further stated that the contentions in the Superintending Engineer, NUC's letter, being letter no. 4565 dated 12.08.2008, are not correct and proper and they are based on wrong interpretation of the Commission's clarificatory order dated 24.08.2008.

He lastly prayed that the illegal assessment bill amounting to Rs.52,89,561 be set aside and that another illegal assessment bill for the period March 2008 upto May 2008 amounting to Rs.71,99,041=24 vide bill dated 11.08.2008 also be set aside.

The non-applicant, on his part, has submitted pointwise reply dated 18.08.2008 in the context of the applicant's request for passing an interim order and also another written submission dated 02.09.2008 which are on record.

In the first instance, he has stated that the revised billing done to the applicant pertaining to the period October, 2006 March 2007 cannot be questioned before this Forum since the applicant had indulged himself in unauthorized use of electricity and in terms of the said Regulations, this Forum has no jurisdiction to disturb the revised assessment done for this period and which is included in the disputed revised bill for Rs.49,00,183=44.

The non-applicant has assertively stated that MSEDCL had issued the revised bill for Rs.16,44,300=70 in June 2007 towards assessment for unauthorized use of electricity for a period of six months from October, 2006 to March 2007 and the applicant had challenged this action before this Forum in grievance case no. 45/2007 and thereupon, the Forum had passed final order on 27.07.2007 in this case holding that the assessment done towards unauthorized use of electricity during the period of six months cannot be questioned before the Forum. It was held that the applicant did make use of electricity during this period un-authorizedly. Hence, according to him, the second revision of assessment for this period amount of which is included in the disputed energy bill of Rs.49,00,183=44 cannot be looked into by the Forum since the Forum has no jurisdiction to

comment upon revised assessment done towards un-authorized use of electricity.

He explained that the Commission has issued clarificatory order on 24.08.2007 by which LT-VII Temporary category tariff has been made applicable in the event of extending supply to consumers

availing temporary supply at HT voltages also. In that, it is clearly mentioned under caption “Tariff for HT temporary consumers” that the tariff stipulated for LT-VII Temporary category is applicable for temporary supply only as follows.

- 1) Temporary connections (other purpose) :- Rs.250/- per connection per occasion as fixed charges and Rs.10.50 per KWH unit as energy charges.
- 2) Temporary connections (Religious) :- Rs.200/- per connection per occasion of supply as fixed charges and Rs.2.00 per KWH unit as energy charges.

Since the applicant is using supply of electricity for construction purposes, the LT-VII tariff Temporary category is the appropriate tariff applicable for such activities and nothing wrong has happened while issuing the revised bill amounting to Rs.49,00,183=44 for the period October, 2006 to February, 2008.

He added that energy bills were issued w.e.f. 01.06.2008 under category of HT Temporary as per revised tariff applicable and in that, again the tariff rate meant for LT-VII Temporary category in terms of Commission’s clarificatory order dated 24.08.2008 is rightly made applicable since the purpose of use of electricity is a construction purpose.

Commenting upon the agreements executed by the applicant on 10.09.2007 and 18.02.2008, the S.E. submitted that these agreements also clearly indicate that the purpose of use of electricity is a construction purpose for which, according to him, highest tariff as per LT-VII Temporary category was rightly made applicable. He submitted

that though the applicant's power supply is sanctioned on permanent basis, the purpose for which the same was sanctioned is of construction purpose and as such, the applicant will have to be categorized as HT temporary connection category consumer. The agreement dated 10.09.2007 is meant for change of name while the second agreement dated 18.02.2008 is meant for enhancement of the applicant's load upto a maximum of 350 KVA contract demand.

According to him, the applicant's contention that he had offered to the non-applicant average bill amount of Rs.2,65,093/- and hence, his power supply cannot be disconnected in terms of Section 56 (1) (b) of the Act is not correct since this was only one month's average energy consumption charge. The applicant was supposed to have offered payment of electricity charges meant for the entire period under dispute at the rate of the average bill amount of Rs.2,65,093/- per month.

The non-applicant has also referred to the tariff order passed by the Commission in case no. 54/2005 and invited our attention to the foot note no. 3 below LT-VII temporary category in which it was clarified that temporary connection (other purposes) mean connection for any constructions works, exhibition, Circus etc. This tariff order was effective from 01.10.2006 and as such, for a HT consumer such as the applicant, his connection will have to be treated as a temporary connection if the purpose of supply is for any construction works. It is in view of this interpretation that the non-applicant strongly claims that the applicant is a HT temporary supply category consumer to whom the LT-VII Temporary category tariff code has rightly been made applicable in terms of the Commission's clarificatory order dated

24.07.2008. He continued to submit that since prior 01.10.2006, the applicant is carrying on construction work and as such he has been rightly categorized as HT temporary category consumer throughout the period under consideration. According to him, billing done to the applicant from October, 2006 till June 2008 was never violative of any of the Commission's tariff orders and as such, the revised billing done to the applicant may not be disturbed. He prayed that the grievance application may be dismissed.

In reply, the applicant's representative vehemently argued that the interpretation drawn by the non-applicant in respect of tariff applicability considering the applicant to be HT temporary connection holder is without any basis and logic and it is against the directives of the Commission. He reiterated that the applicant is not a temporary connection holder but his connection is permanent. Had the applicant's power supply been temporary, there should have been an agreement on record to the effect that the licensee has sanctioned supply to him for a period not exceeding two years. He cited clause 10 (a) of the agreements, executed by both the parties on 10.09.2007 for change of name

and another dated 18.02.2008 for enhancement of load in which it is clearly mentioned that his power supply was initially valid for two years and from year to year thereafter. According to him, the non-applicant has wrongly applied the LT-VII Temporary category tariff and that the non-applicant's actions are violative of the Commission's tariff orders.

The main issues to be decided in this case are :

- 1) Whether the applicant's power supply can be termed as temporary supply since use of power is for construction purposes and whether LT-VII Temporary category tariff is applicable to him in terms of the Commission's Clarification dated 24.08.2007.
- 2) Which tariff rate is applicable period-wise to the applicant in the circumstances of the case.

The Member-Secretary of this Forum has given his opinion as stated below.

“The said disputed bill of Rs.49,00,183=44 is of the period October, 2006 to February, 2008.

For October, 2006 to March 2007 period, assessment was previously done by non-applicant under Section 126 of Electricity Act, 2003 and Forum should not decide whether new (revised) assessment is correct or not. The matter may be raised by applicant at proper designated Court etc.

For April 2007, the bill may not be revised because total revision of bill is based on the Commission's clarificatory order in case no. 26/2007 and 65/ 2006 dated 24.08.2007.

The matter regarding applicability of order whether has retrospective effect before 01.05.2007 is already under Court of Law in writ petition no. 1305/2006 at Nagpur High Court.

In the above order, the Commission has approved to charge H.T. temporary connection holders the same tariff as is applicable to LT – VII Temporary category.

The non-applicant after spot inspection observed that the said H.T. connection is being utilized for construction purpose of Residential / Commercial complexes converted the same to H.T. VI category i.e. H.T. commercial. At that time, no other tariff in H.T. category was determined by the Commission for construction purpose and activity of construction is still continuing. Only on the ground that it is a permanent connection and tariff for temporary connection should not be applied, even an agreement is there, does not stand good if purpose of supply is defeated.

Hence, as per my view LT-VII Temporary category should be applied for the period of 01.05.2007 to February 2008, and March 08 to June 08 as far as dispute of revision of bill of the present case. The period of dispute under consideration is April 2007 to June, 2008.”

The other two members of this Forum namely Member Smt. Gauri Chandrayan and the Chairman hold a contrary opinion concurrently. Their concurrent opinion in this case is as detailed below.

“In the first place, we hold that it is not correct to say that the matter regarding applicability of the Commission’s tariff order with retrospective effect even prior to 01.05.2007 is already under Court of Law in writ-petition no. 1365/2006 at Hon’ble High Court at Nagpur as mentioned by the Member-Secretary. The reference to the writ petition is not relevant and it is misconceived since the facts and circumstances involved in the writ petition and those of the present application are not similar.

As regards the categorization of the present applicant, the record of the case shows beyond doubt that the applicant is a HT consumer availing permanent supply. The Superintending Engineer

representing the non-applicant Company also admitted during the course of hearing that the applicant's power supply is permanent. However, his contention is that the applicant is categorized as temporary connection holder since the supply of power is meant for construction activities. It is absurd to say that the connection is temporary and power supply permanent.

We observe that the tariff for HT temporary consumer category has come into force for the first time in terms of Commission's clarificatory order dated 24.08.2007 and in that, the Commission has clearly held that LT-VII temporary category tariff is applicable also in the event of extending supply to consumers availing temporary supply at HT voltage also. The words "temporary supply" mentioned by the Commission are very important. Temporary supply has been defined in the Supply Code Regulations vide Regulation 2.1 (v). This definition is as under :

"Temporary Supply" means supply of electricity for a temporary period, not exceeding two years as may be agreed between the Distribution Licensee and the applicant.

It is an admitted position on record that the applicant's power supply was never sanctioned in the past at any point of time for a period not exceeding two years. On the contrary, the Superintending Engineer himself is admitting that the applicant's power supply is a permanent one. Thus, it will not be proper and correct to say that power supply for construction activities for a continuous period of more than two years amounts to temporary supply. The non-applicant ought to have executed an agreement to the effect that the applicant's power supply is sanctioned for a specific period not exceeding two years in

order to categorize the applicant as a temporary connection holder meant for temporary supply. However, the agreements produced on record nowhere indicate that the applicant's power supply was a temporary supply. Clause 10 (a) of the agreements stipulates that the period of supply shall be a minimum period of two years and from year to year, thereafter determinable as per procedure prescribed thereunder. It is to be borne in mind that the definition of temporary supply has been made in the Supply Code Regulations which have come into effect from 20.01.2005 and in that, no exception is made for such a supply for construction activities.

There are two sub-categories of LT-VII Temporary consumers sanctioned by the Commission and they are (1) Temporary connections-Other Purpose and (2) Temporary connection – Religious purpose. Construction activities are covered by other purpose.

Regulation 13 of the Supply Code Regulations on the classification and reclassification of consumers into tariff categories lays down that the Distribution Licensee may classify or reclassify consumers into various Commission approved tariff categories based on the purpose of usage of supply by such consumers. Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission. By classifying the present applicant as a HT temporary consumer even though his supply of power is permanent and only on the ground that the purpose of supply is a construction purpose, the non-applicant has tried to create a tariff category for the applicant for which there is no approval of the Commission.

In view of above, we are of the opinion that the tariff meant for LT-VII Temporary category cannot be made applicable to the present applicant and consequently, the entire billing done to the applicant by considering the application of LT-VII Temporary tariff category becomes null and void.

It is also to be seen that the Commission's tariff order dated 24.08.2007 is effective from 01.05.2007 and as such, the tariff for HT temporary consumers would be applicable w.e.f. 01.05.2007. This clarification meant for tariff for HT temporary consumers cannot be made applicable for revising their bills for period prior to 01.05.2007. At the most, such a revision is permissible w.e.f. 01.05.2007 only. The Question of applicability of LT – VII Temporary category tariff will in no case be applicable to HT Temporary consumer prior to 01.05.2007. It is in view of this firm view that we say that the billing already done prior to 01.05.2007 cannot be revised by the non-applicant. It will be improper to revise the applicant's energy bills prior to 01.05.2007 by making applicable LT-VII temporary tariff rate irrespective of any other things. Moreover, since the applicant is availing supply for a period exceeding two years, he cannot be termed as HT Temporary category consumer and consequently LT-VII Temporary category tariff cannot be made applicable to him even after 01.05.2007.

Much has been said about the assessment done under Section 126 of the Electricity Act, 2003 towards unauthorized use of electricity for the period October, 2006 to March 2007 and in that, both the non-applicant and Member-Secretary of this Forum are of the view that the revised assessment made for this period by making

applicable LT-VII category temporary category tariff cannot be questioned before this Forum.

It is true that under the said Regulations, this Forum is not authorized to adjudicate upon the assessment done under Section 126 of the Electricity Act, 2003. It is also correct to say that this Forum previously passed an order on 27.07.2008 in case 45/2007 holding that the applicant's grievance in respect of unauthorized use of electricity and matters pertaining thereto cannot be entertained by this Forum. However, it is also a matter of record that consequent upon issuance of this Forum's order on 27.07.2008, the applicant made payment of provisional assessment bill amount of Rs.16,44,300=70 and the matter ended there. The basic question is whether even for assessment under Section 126, the applicant can be subjected to make payment of the revised assessment amount at a rate of tariff which was not existing at the relevant time. In this case, the non-applicant has made applicable the LT-VII temporary category tariff even to the period prior to 01.05.2007. Basically this is violative of the Commission's clarificatory order dated 24.08.2007 in so far as HT temporary consumers are concerned. We reiterate that the applicant cannot be categorized as HT temporary consumer and hence, the LT-VII temporary tariff cannot be made applicable to the applicant for period not only after 01.05.2007 but also for the prior to before 01.05.2007. Hence, irrespective of the period involved, we firmly opine that it is patently wrong on the part of the non-applicant to have applied LT-VII temporary tariff to the applicant throughout the period under dispute. Principles of natural justice also support this view.

The basic legal question is whether Section 126 can be invoked again for the purpose of revising previous assessment at a tariff rate that was never applicable. Precisely, this has happened in this case which is abinitio illegal. It is in view of this perception that we hold that the non-applicant's claim for the differential amount for the period October, 2006 to March, 2007 cannot sustain in the eyes of law. As a matter of fact, the entire claim for differential amount is null and void. Question of coming into play Section 126 again does not arise because basically a non-existent and wrong tariff has been considered by the non-applicant which is abinitio illegal. Hence, while disagreeing with the view expressed by the Member-Secretary, we opine that LT-VII temporary category tariff as mentioned in the Commission's tariff order 24.08.2007 cannot be made applicable to the present consumer during the entire period under dispute.

The non-applicant has made a point about clarification given in the foot note no. (3) meant for LT-VII Temporary category consumer vide LT tariff effective from 01.10.2006. The clarification given as stated by the non-applicant pertains to LT-VII temporary category and it has no application for HT consumers. Moreover, a temporary connection is always related to temporary supply and there cannot be any temporary connection in respect of power supply on permanent basis. If it happens, it is in itself self contradictory.

Hence, the contentions raised by the non-applicant in this regard are devoid of any merits or logic and they also do not have support of Electricity Act, 2003, Supply Code Regulations and

Commission's tariff orders. The other contentions raised by the non-applicant are of no consequence.

We, therefore, hold as under :-

- 1) The applicant's power supply being permanent it cannot be termed as temporary supply only because the use of power is for construction purposes and irrespective of any other things, the tariff rate meant for LT-VII Temporary category as per Commission's clarificatory order dated 24.08.2007 cannot be applied to the present case for the purpose of revising energy bills for entire period under consideration.
- 2) The tariff rate meant for HT-VI commercial category already made applicable previously by the non-applicant holds good and tariff rate meant for such category as approved by the Commission from time to time only needs to be applied."

Regulation 8.4 of the said Regulations provides that where the Members differ on any point or points, the opinion of the majority shall be the order of the Forum.

In this case, other two members of this Forum namely Member Smt. Gauri Chandrayan and the Chairman expressed their opinion concurrently contrary to the one given by the Member-Secretary. Hence, opinion of the majority becomes the order of the Forum.

In view of above, the applicant's grievance application stands allowed and the non-applicant is directed not to revise the applicant's energy bills from October, 2006 to May 2008 and in that, the tariff meant for LT-VII temporary category shall not be made

applicable to the applicant. The bills meant for differential amounts challenged are set aside. The non-applicant shall issue revised bill accordingly. The power disconnection notice dated 02.08.2008 stands quashed.

The non-applicant shall carry out this order and report compliance to this Forum on or before 20.10.2008.

Sd/-	Sd/-	Sd/-
(S.J. Bhargawa)	(Smt. Gauri Chandrayan)	(S.D. Jahagirdar)
Member-Secretary	MEMBER	CHAIRMAN

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD's
NAGPUR URBAN ZONE, NAGPUR**

Member-Secretary
Consumer Grievance Redressal Forum,
Maharashtra State Electricity Distribution Co.Ltd.,
Nagpur Urban Zone, NAGPUR