

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

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**Case No. CGRF(NZ)/58/2016**

Applicant : M/s.Hindusthan Udhog Ltd.  
A-1/2. Buttibori Ind. Area, MIDC,  
Nagpur.

Non-applicant : Nodal Officer,  
The Superintending Engineer,  
NUC,MSEDCL,  
NAGPUR.

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Applicant :- In person.

Respondent by 1) Shri Khadatkar, DyEE(HT) NUC

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Quorum Present : 1) Mrs. V.N.Parihar,  
Member, Secretary  
& I/C.Chairman.  
  
2) Shri N.V.Bansod,  
Member

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**ORDER PASSED ON 04.06.2016.**

1. The applicant filed present grievance application before this Forum on 06.05.2016 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. Non applicant, denied applicant's case by filing reply dated 16.05.2016.

3. According to the applicant, he is a consumer of MSEDCL connected on 33KV line with contract demand 3000 KVA and his grievance is to refund the amount

Charged in their electricity bills by non-applicant since 2008 by wrongly considering their Tariff as continuous, instead of non-continuous, by wrongly treating their supply as continuous supply. He further contended that applicant's supply is not connected on express feeder as per the definition of the express feeder and hence their supply is non-continuous supply since the date their connection was released.

4. To substantiate their claim he contended that, they received letter dated 12-02-2007 from MSEDCL to observe the staggering holidays on Wednesday and Thursday in each week and supply will not be available to industries from 6.00 hrs. to 22.00 hrs. on Wednesday and Thursday until the improvement in power situation.

5. Applicant issued letter to Executive Engineer, MIDC, Butibori Division on dated 11-07-2008 in respect of poor quality of power and low voltage on 33 KV feeder on which the applicant is connected, requesting to do the needful to improve the quality of power.

6. Non-applicant issued letter to them on dated 24-07-2008 about critical power situation in the State and asked to observe 10% reduction in power consumption every day otherwise there will be increase in load shedding hours.

7. Applicant vide letter dated 01-09-2008 to the Executive Engineer, MSEDCL regarding frequent power failure since July-2008 on 33 KV Jayaswal Neco feeder since the same feeder fed supply to Jayaswal Neco Industries as well. Due to frequent power failure, the production of applicant was affected leading to failure of precious equipment.

8. In spite of above correspondence made by him & although there were continuous interruptions in the supply. He was charged HT-I continuous tariff applicable for express feeder as per tariff order of Commission applicable from June-2008.

9. Commission issued tariff order dated 20-06-2008 applicable from the month of June-2008 vide case No.72 of 2007 and revised the applicable tariff for industries. In this tariff order Commission specified different tariff for express feeder consumers and non express feeder consumers.

10. Applicant stated that in the tariff order of the Commission applicable from June-2008, it is mentioned that “Only HT industries connected on express feeders 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 industry”.

11. Applicant stated that non-applicant filed application for clarification of the tariff order applicable from 01-06-2008 and requested the Commission as under:

a) *“the clause “demanding continuous supply” may please be removed from the definition of HT-I (Continuous industry);*

b) *Existing consumers categorized under HT-I continuous as on 01 April 2008 should be continued under same category;*

c) *HT-I (continuous) tariff category should be applicable to all industries connected on express feeder irrespective of whether they are continuous or non-continuous process industries”.*

d) The Commission ruled in case No.44 of 2008 that there is no justification for removing the clause “demanding continuous supply from the definition of HT-I continuous category”. Commission further said that,

*.....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 issue of the Tariff order for the relevant tariff period.*

*In the present instance, the consumer may be given one month time from the date of issue of the order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.*

12. The MSEDCL, on the basis of the above order, issued a Circular No.88 on 26<sup>th</sup> September,2008, highlighting the above features of the Commission’s order,

*“Only HT industries connected on express feeders 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 industry”.*

*“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 issue of the tariff order for the relevant tariff period”.*

Therefore applicant prayed that, as per the tariff order of commission & definition of express feeder in circular No.88 of MSEDCL & the applicant should be charged non-express feeder tariff”.

13. Thereafter in different tariff orders of Commission i.e. in case No.111 of 2009 dated 12-09-2010, case no.19 of 2012 dated 16-08-2012 and case no.121 of 2014 dated 26-06-2015, same condition was specified.

14. The applicant stated that feeder feeding supply to them is not an express feeder. since the definition of express feeder, dedicated distribution facilities provided. In the MERC (Electricity supply code and other conditions of supply) Regulations, 2005 and SOP Regulations issued on dated 20-05-2014 clarified express feeder is as under:

*“Dedicated distribution facilities – means such facilities, not including a service line, forming part of the distribution system of the distribution licensee which are*

*clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises”.*

*“Express feeder” is a feeder emanating from the licensee's substation to connect to a single point of supply, which also includes dedicated distribution facility (DDF);*

15. Therefore according to him, applicant's feeder is not an express feeder since more consumers are being given supply from the same feeder and his premises is not a contiguous premises. Hence it is crystal clear that applicant is connected on non express feeder since the beginning.

16. Applicant mentioned, the Commission's order applicable from 01-06-2008 and further in clarification in the order said that,

*“Only HT industries connected on express feeders 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 industry”.*

17. Applicant said as per above directive the MSEDCL should have charged HT non continuous tariff to all the HT consumers and only HT industries connected on express feeders and demanding and given continuous supply should have been charged express feeder tariff. The clarification order has been issued with respect to the second part of Commission's above directives and directs that the demand of continuous supply & given continuous supply should be applied by the applicants only once in the year, within the first month after issue of the tariff order for the relevant tariff period. And non continuous tariff should have been charged from 01-06-2008 as no application for demanding continuous supply was submitted by applicant.

18. Applicant stated that, vide letter dated 28-08-2015 requested to change the tariff category to non continuous from the month of September-2015.

19. Applicant further contended that respondent should have revised all the energy bills after 01-06-2008 till August-2015 considering and applying non express feeder non continuous supply tariff and MSEDCL should refund the excess amount paid by the applicant along with interest under section 62(6) of Electricity Act 2003.

20. Applicant reproduced the relevant portion of the Hon'ble Electricity Ombudsman Mumbai, issued order in case No.146 of 2009, Paul Strips and Tubes Pvt. Ltd. V/s. MSEDCL.

*“In view of the aforesaid, the short question that arises for decision in the above background, is whether the Respondent was right in changing the Appellant’s tariff category, from HT-I – Non continuous (not on express feeder) to HT-I – Continuous Industry ( on express feeder). Commission’s tariff order applicable from 1<sup>st</sup> June, 2008 as reproduced above, also provides the following note:*

*Note:*

*i. ....*

*ii. ....*

*iii. ....*

*iv. Only HT industries connected on express 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 industry”.*

21. *“The above provision makes it clear as to which industries are to be deemed as HT continuous and which ones, as HT non continuous industries. The*

*respondent's argument is that the feeder on which the Appellant is supplied is an express feeder and it enjoys continuous supply. The Appellant disputes this claim. It says that there are several industries in the state which are catered on express feeders and billed at non continuous tariff as they may not have opted to get supply on continuous basis. Moreover, it clear from the above note that there are two requirements to be fulfilled before any industry is charged at continuous / non continuous tariff. They are:*

*a) HT Industry has to be connected on express feeder.*

*and*

*b) Such HT industries have to demand continuous supply.*

*As seen, for charging HT-I continuous Industry tariff, both the above conditions are required to be satisfied”.*

*“The Commission subsequent to the tariff order of 20<sup>th</sup> June, 2008, issued a clarificatory order on 12<sup>th</sup> September, 2008, directing the respondent to ensure that the clarifications given in that order, are implemented with effect from 1<sup>st</sup> June, 2008. The respondent, in turn, issued a commercial circular no.88 on 26<sup>th</sup> September, 2008, explaining main features of the order, as under:*

*“Applicability of HT-I (continuous industry):*

*In the tariff order, the Commission has specified 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 industry”.*

*Now Commission has 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 issue of the tariff order for the relevant tariff period.*

22. In the present instance, the consumer may be given one month time from the date of issue of this circular for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.

23. Applicant also stated that, the appellant has not given any choice within one month from the said circular. This fact is not disputed by the non-applicant also. In such a situation, later part of the said circular stipulates what is to be done in case the choice is not exercised. In such an eventuality, the existing categorization of the consumer is required to be continued. The existing tariff levied was “continuous tariff” until June, 2008. The appellant has not opted or demanded it was given to him from the express feeder. There is no such letter on record. Since the choice is not exercised, its existing categorization i.e. HT-I non-continuous (not on express feeder) tariff, is bound to be continued in terms of the provisions in the clarificatory order and in the commercial circular no.88 of non-applicant.”

24. Applicant further contented that, it is abundantly clear from the above order based on Commissions directives and Electricity Ombudsman observations that there are two conditions for charging HT tariff i.e. industry is to be connected on express feeder and such industry have to demand continuous supply & given continuous supply.

25. The applicant does not satisfy both conditions i.e. he is neither connected on express feeder nor he has demanded continuous power or given supply after tariff order of Commission issued on June-2008. Applicant further contented that



MSEDCL did not give continuous supply since there were continuous interruption and load shedding was also observed.

26. Applicant contented that; respondent is issuing wrong bills continuously from June-2008. The wrong doings once brought to the notice of authorities cannot be continued under the garb of cause of action or time limitation. He has given reference of order issued by the Hon'ble Supreme Court of India in Civil Appeal No.5151-5152 of 2008 dated 13-08-2008 in case of Union of India V/s. Tarsem Singh in Supreme Court which held that;

*The principles underlying continuing wrong and recurring / successive wrongs have been applied to service law disputes A continuing 3.*

*Wrong refers to a single wrongful act which causes a continuing injury. Recurring / successive wrongs are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P.Waghmare V/s. Shri Dhyaneshwar Maharaj Sansthan – [AIR 1959 SC 798], explained the concept of continuing wrong (in the contest of section 23 of limitation Act, 1908 corresponding to section 22 of limitation Act, 1963):*

*“It is the very essence of a continuing wrong that it is an Act which creates a continuing source of injury and renders the doer of the Act responsible and liable for the continuance of the said injury. If the wrongful Act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the Act may continue. If, however, a wrongful Act is of such a character that the injury caused by it itself continuous, than the Act constitutes a continuing wrong. In this Connection, it is necessary to draw a distinction between the injury caused by the Wrongful Act and what may be described as the effect of the said injury.”*

27. Hence, applicant said that, as per Hon'ble Apex Court order, the wrong doing by the non applicant by charging 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 bared by time limitation of cause of action.

28. Applicant stated that non-applicant may recover excess charges for electricity supplied to the consumer as per section 45 (1) and (2) of Electricity Act 2003 as well as contented that any excess recovery shall be refunded to the consumer along with interest as per section 62 (6) of Electricity Act 2003 and there is no time limitation factor and the refund of excess recovery by the Licensee cannot be time barred. Applicant further made reference to section 56(2),126(5) and 126(6) there is no time limitation for recovery by the licensee in case the period of unauthorized use of electricity.

29. Applicant prayed that in light of above facts MSEDCL should revise all the energy bills from the month of August-2008 till August-2015 and refund the excess amount paid by the applicant along with interest under section 62(6).

30. According to the applicant, aggrieved by non-applicant's violation of the terms and conditions of tariff order of Commission, applicant registered his grievance with IGRC on dated 30-12-2015 .IGRC neither heard the matter nor passed the order and hence the present grievance application filed under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

31. Non-applicant in its para-wise reply stated that, Initially since 12/11/1993, M/s ACC Nihan casting Ltd. was HT consumer bearing no 430019003382 with Connected

load 6425 KW and Contract Demand 2500 KVA, connected on 33 KV Jaiswal Feeder emanating from 220 KV Butibori Sub-station. Change of name from M/s..ACC Nihan casting Ltd. To M/s Hindustan Udyog Ltd is executed as per applicant's application dt.05/08/2009 vide order of Superintending Engineer, NRC, MSEDCL, Nagpur dated 28-04-2010, & billed as per industrial tariff.

32. Non-applicant referred MERC's tariff order dated 29-02-2006 effective from 01-10-2006 which states the two categories HT-1 continuous and HT-1 non continuous. Since the release of connection, applicant has been connected on 33 KV Neco Jaiswal feeder & same being an express feeder, Applicant has been billed HT-1 continuous tariff from October-2006. Applicant was well aware of this fact that 33 KV Neco Jaiswal feeder is an express feeder. Besides this applicant, all other consumers connected on this feeder were billed as per HT-1 continuous industries Tariff. Moreover as per MERC revised tariff dated 18-05-2007 w.e.f. 01-05-2007, a non-applicant continued billing of the applicant with HT-1 continuous tariff category.

33. Non-applicant submitted that, MERC tariff order effective from dt. 01-10-2006 and dt. 01-05-2007, the rate for HT-1 continuous industry was less as compared to rate for HT-1 non continuous industry and consumer did not raised any objection at that time.

34. Non-applicant further submitted that the, tariff order dated 20-06-2008 in case No.72 of 2007 effective from 01-06-2008 stated that, only HT industry connected on express feeder and demanded continuous supply shall be continuous industry given continuous supply while all other HT industrial HT consumers will be deemed as HT non continuous industry. The MERC's clarificatory order dated 12-09-2008 circulated vide MSEDCL commercial Circular No. 88 stated as under,

*“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 issue of the Tariff Order for the relevant tariff period. In the present instance, the 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 the specified period, then the existing categorization will be continued”.*

35. Non-applicant said that, it is clear from this clarificatory tariff order dated 12-09-2008 & MSEDCL related Circular no.88 Dt.26/09/2008 that, if consumer wants to change its tariff category from continuous to non-continuous, the consumer ought to give the choice of continuous or non continuous within one month from the issue of clarificatory order dt. 12/09/2008. But in the instant case, applicant did not exercised his choice against HT-I continuous industry tariff.

36. Subsequent to tariff orders dated 12-09-20010 in case no.111 of 2009 which came in effect from 01/09/2010 and Tariff order for the period 2012-13 issued by MERC on dt. 16/08/2012, effective from dt. 01/08/2012, again applicant did not give choice between continuous to non continuous industry tariff. Non-applicant further stated that In the Multi Year Tariff order which was issued by MERC in the case No.121 of 2014 on dated 26-06-2015 which came in effect from 01-06-2015, It is mentioned that, “the consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply anytime during the financial year but only ‘once in the financial year with one month prior notice”.

37. Non-applicant contented that this time consumer submitted option as per tariff order for change in tariff from continuous to non continuous on dated 23-07-2015 and

MSEDCL changed the tariff of this consumer from the billing month of September-2015.

38. Non-applicant alleged that applicant is trying to mislead the forum between the terms dedicated distribution feeder and express feeder which is defined in the MERC standard of performance of Distribution Licensees Regulations, 2014. The same definition came into force w.e. from 20/05/2014. Non-applicant further said that it is clear from the facts that, the moment consumer submitted option for change in tariff from continuous to non continuous, it was changed.

39. Non-applicant contented that consumer is misleading the forum by requesting to revise all the energy bills from August-2008 to August-2015 considering application of non express feeder tariff and unjustified refund of the excess amount paid along with interest under section 62(6). The consumer did not raise any objection at the time when rate for HT-I continuous Industries was less than HT-I Non continuous Industries and raised the grievance by filling application almost after 10 years i.e. on date 30-12-2015 when non-applicant started billing them with tariff HT-I continuous industry on consumer's request only.

40. Hence submitted that, the applicant is rightly charged with HT-IC (HT Industry Express feeder )Tariff category till the consumer submitted the option for non-continuous Industrial tariff on dt 23/07/2015 as per MERC Tariff order dt.26/06/2015 and MSEDCL commercial circular no. 246.and requested the forum for dismissal of the Grievance.

41. **At the time of hearing, Quorum present was**

**1) Member Secretary & I/C.Chairman.**

**2) Member (CPO).**

42. As per in clause 4.1(c) of MERC (CGRF & EO) Regulation 2006 which reads as under,

**4.1(c) “Provided also that where the Chairperson is absent from a sitting of the Forum, the technical member, who fulfills the eligibility criteria of sub-clause (b) above, shall be the Chairperson for such sitting”.**

44. Needless to say that, in absence of Hon’ble Chairman, Member Secretary is In-Charge Chairman. There is difference of opinion amongst the two. Since I/Charge. Chairman has one additional casting vote, therefore as per provision given in clause 8.4 of MERC (CGRF & EO) Regulation 2006 which reads as under,

**8.4 “Provided that where the members differ on any point or points the opinion of the majority shall be the order of the Forum. The opinion of the minority shall however be recorded and shall form part of the order”.**

45. Hence, the Judgment is based on majority view of I/C chairman and Member Secretary. However the separate dissenting note of Hon’ble Member (CPO) is noted in the judgment and it is part and parcel of the judgment. **But the judgment is based on majority view and reasoning thereof is as under:**

46. Forum heard the arguments of both the parties and perused the documents on record and issues are –

- A) Whether application dated 06-05-2016 is barred by limitation? - yes
- B) Whether supply of applicant can be categorized as on non express feeder and non continuous tariff category? - No
- C) Whether applicant is entitled for the relief under section 62(6) of Electricity Act 2003? - No

**Issue (A)** Non applicant in para 10 of his reply stated that applicant has filed

the grievance before IGRC on dated 30-12-2015 i.e. after 9 years, as since Oct2006,MSEDCL started billing them with tariff HT-I continuous industries and demanding benefit from August-2008 i.e. almost from the period before 7 years.

47. Applicant contented in para 18, that MSEDCL is issuing wrong bills continuously from June-2008. The wrong doings once brought to the notice of authorities can not be continued under the garb of cause of action or time limitation.

From the above orders by the Hon'ble Apex Court, it is clear that the wrong doing has to be there, and then only one can challenged it. Non-applicant in their reply stated that as per MERC tariff order dated 29-09-2006 effective from 01-10-2006 there were two categories HT-I continuous industries and HT-I non continuous industries introduced by MERC and 33 KV Neco Jaiswal feeder being an express feeder, this consumer was billed as per tariff category HT-I continuous industry from October-2006 . Non-applicant also Stated that consumer was well aware of the fact that 33KV Neco Jaiswal feeder is an express feeder at that time and all other consumers connected on this feeder were also billed as per tariff category HT-I continuous industry. Non-applicant said that MERC tariff order was effective from 01-10-2006 and 01-05-2007.As the rate for HT-I continuous industries was less than HT-I non Continuous industries, consumer did not raise any objection at that time.

48. Although ,applicant contented that from 33 KV Neco-Jaiswal feeder along with the applicant ,other 4 additional Companies are also given supply, and Non-applicant has been charging them along with the applicant HT-I continuous tariff since Oct2006. But applicant did not challenge the same as charges for HT-I Continuous tariff were less. But when charges for HT-I Continuous tariff were on higher side as compared to charges for non-continuous Category, In spite of clear instructions of

MERC to give option for change of tariff, consumer did not exercise his option even once, except on dt 23/07/2015 that too as MERC's tariff order dt.26/06/2015.

49. Forum accepts above contention put forth by non-applicant and felt that ,allegation of the applicant that, the non applicant committed mistake by charging 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, does not hold good in this matter.

50. It is also seen that applicant made representation to IGRC on dated 30-12-2015 i.e. after 9 years and 3 months. and present application before forum is filed on 06-05-2016 and hence grievance is not within limitation and can be said to be barred by limitation of cause of action ,as in the instant case cause of action was happened on dt. Oct2008.

**(B)** Whether supply of applicant can be categorized as on non express feeder and non continuous tariff category?

51. Applicant emphasized on definition of express feeder and dedicated distribution facilities which are defined in MERC (standard of performance of distribution licensee and period for giving supply and compensation) Regulations, 2014 in clause (l), & (m) which is as under;

*(l) "dedicated distribution facilities" means such facilities, not including a service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises;*

*(m) "Express feeder" is a feeder emanating from the Licensees substation to connect to a single point of supply, which also includes dedicated distribution facility (DDF);*



As per definition of express feeder, a feeder emanating from the Licensees substation to connect to a single point of supply which also includes dedicated Distribution facilities. Dedicated distribution facilities means such facilities, not including a service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises.

52. After hearing argument put forth by both parties, forum is of the opinion that the definition of DDF and express feeder came into existence as per MERC SOP of Distribution Licensees Regulations 2014 on dt. 20/05/14. Earlier no such definition was mentioned in any tariff order since the time of connection given to the applicant in the year 2006 and afterward. Therefore as per prevailing definition of express feeder, applicant was treated to be connected on express feeder and dedicated distribution facilities was treated to be inclusive part of express feeder. On this issue applicant was silent and never raised any objection. As this fact was accepted by the applicant and known to him, non-applicant has been rightly charging them as per rules and regulations only. Moreover applicant continued to enjoy facilities provided by virtue of being continuous industry such as lower tariff applicable to continuous industries as compared to non-continuous industries. This was further substantiated by the fact that, non-applicant neither gave any application against the levy of HT-I category nor given *his choice between continuous and non-continuous supply within the first month after issue of the Tariff Order for the relevant tariff period.*

53. Applicant filed his letter dated 11-07-2007 address to non-applicant that, since a week due to poor quality of power, they are facing the problem of power fluctuation, and the letter dt 1/09/2008 regarding frequent power failure. It is seen from these

letters that such situation was experienced by them for a week period only (as per letter 11/07/2007), and since July-2008 as per the letter 1/09/ 2008,i.e. not before that and even after that. Except these letters, no other documentary evidence is submitted by the applicant, to prove that applicant was experiencing frequent power failure throughout the period their supply was in existence. It is also admitted by the non-applicant that this power failure situation was for a particular period only and after that the supply was totally continuous. Hence these documents can not be the evidence, that applicant's supply was non-continuous since October-2008.

54. Hence contention of the non-applicant is not acceptable to the forum that the non-continuous supply was given to the applicant.

55. Considering the above facts, the forum holds the view that, as the supply of the applicant was continuous one only. In tariff order of the Commission applicable from June-2008 in which it is mentioned 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 industry*".

*In case such choice is not exercised within the specified period, then the existing categorization will be continued*

56. It is crystal clear that the Commission has fixed responsibility on non-applicant to categories HT industries consumer as HT non continuous industries or HT continuous industries connected on express feeder as per demand submitted by the consumers.

57. Hence it would be most appropriate to consider the submission of the non-applicant and arguments of the non-applicant that option was required to be

exercised by such consumers fed from express feeder with continuous supply, but applicant has not applied for change of tariff in the first month after issue of tariff order 2008 in spite of clear directives of MERC.

58. Therefore Forum is of the firm opinion that, it was duty of the applicant to give choice to get the deem effect for changing the HT continuous industries to HT non continuous from 01-06-2008 as per deemed provision in the tariff order of MERC applicable from June-2008, and thereafter in different tariff orders of Commission i.e. in case No.111 of 2009 dated 12-09-2010, case no.19 of 2012 dated 16-08-2012 and case no.121 of 2014 dated 26-06-2015, same condition was specified.

59. In absence of such choice, existing categorization i.e. HT continuous industry consumer being his supply on express feeder continued for billing purpose is just and in order.

60. When applicant requested non-applicant for change of tariff category to non continuous as per his application dt.23/07/2015 as per MERC tariff order dt. 26/06/2015, MSEDCL changed the tariff of the applicant from the bill for the month of September-2015.

C) Whether applicant is entitled for relief under section 62(6) of Electricity Act 2003?

61. From the argument and reply of both the party, it is seen that the appellant has not given any choice within one month from the said circular. There is no such letter on record. This fact is not disputed by the non-applicant also. In such a situation, later part of the said circular stipulates what is to be done in case the choice is not exercised. In such an eventuality, the existing categorization of the consumer is required to be continued. The existing tariff levied was "continuous tariff" until

June, 2008. The appellant was given continuous supply to him from the express feeder. Since the choice is not exercised, its existing categorization i.e. HT-I continuous tariff, is bound to be continued in terms of the provisions in the clarificatory order and in the commercial circular no.88 of non-applicant.”

62. In view of the above observation and provisions of MERC’s various tariff orders, as per majority view, we held that there is no substance in the grievance application and therefore applicant is not entitled for refund of difference between HT continuous industries and HT non continuous industries tariff. And therefore applicant’s prayer for revision all the energy bills from the month of August-2008 till August-2015 and refund the excess amount paid by the applicant along with interest under section 62(6)of the Electricity Act 2003 with interest at the Bank rate is hereby dismissed.

**63. The separate dissenting note of Hon’ble Member (CPO) is given as under.**

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“1. An applicant is H.T. consumer bearing no.430019003383 connected on 33KV line with connected load 8825 KW and contract demand 3000 KVA since 12-11-1993. The grievance of the applicant is regarding revision of bill & refund of excess amount received by non-applicant on the pretext that applicant’s supply is connected with on express feeder with continuous supply even though the non-continuous supply was available to the applicant, as per tariff order.

2. Applicant narrated the facts that applicant received letter dated 12-02-2007 from MSEDCL to observe the staggering holidays on Wednesday and Thursday in each week and supply will not be available to industries from 6.00 hrs. to 22.00 hrs. until the improvement in power situation. (exe.1)

3. Commission issued tariff order dated 20-06-2008 applicable from the month of June-2008 vide case No.72 of 2007 and revised the applicable tariff for industries. In this tariff order Commission specified different tariff for express feeder consumers and non express feeder consumers.
4. Applicant issued letter to Executive Engineer, MIDC, Butibori Division on dated 11-07-2008 in respect of poor quality of power and low voltage on 33 KV feeder on which the applicant is connected. Applicant requested to do the needful to improve the quality of power. (Ex.2).
5. Non-applicant issued letter dated 24-07-2008 informing about critical power situation in the State and to observe 10% reduction in power consumption every day otherwise MSEDCL will increase load shedding hours. (Ex.3).
6. Applicant was charged HT-I tariff applicable for express feeder as per tariff order of Commission applicable from June-2008. Though there was continuous interruption of supply. Applicant vide letter dated 01-09-2008 to the Executive Engineer, MSEDCL in regards to frequent power failure since July-2008 on 33 KV line which is called Jayaswal Neco feeder since the feeder is going to Jayaswal Neco Industries. Due to frequent power failure the production of applicant was affected and there were failure of precious equipment. (Ex.4).
7. Applicant stated that in the tariff order of the Commission applicable from June-2008, it is mentioned that "Only HT industries connected on express feeders 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 industry".
8. Applicant stated that non-applicant filed application for clarification of the tariff

order applicable from 01-06-2008 and requested the Commission as under:

- e) *“the clause “demanding continuous supply” may please be removed from the definition of HT-I (Continuous industry);*
- f) *Existing consumers categorized under HT-I continuous as on 01 April 2008 should be continued under same category;*
- g) *HT-I (continuous) tariff category should be applicable to all industries connected on express feeder irrespective of whether they are continuous or non-continuous process industries”.*

9. The Commission ruled in case No.44 of 2008 that there is no justification for removing the clause “demanding continuous supply from the definition of HT-I continuous category”. Commission further said that,

*.....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 issue of the Tariff order for the relevant tariff period. In the present instance, the consumer may be given one month time from the date issue of the order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.* (Ex.5).

10. The MSEDCL, on the basis of the above order, issued a Circular No.88 on 26<sup>th</sup> September,2008, highlighting the above features of the Commission’s order,

*“Only HT industries connected on express feeders 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 industry”.*

*“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 issue of the tariff order for the relevant tariff period”. (Ex.6) As per the tariff order of commission, & definition of express feeder in circular No.88 of MSEDCL & the applicant should be charged non-express feeder tariff”.*

11. Thereafter in different tariff orders of Commission i.e. in case No.111 of 2009 dated 12-09-2010, case no.19 of 2012 dated 16-08-2012 and case no.121 of 2014 dated 26-06-2015, same condition was specified.

12. The applicant stated that feeder is not an express feeder. Definition of express feeder, dedicated distribution facilities provided in the MERC (Electricity supply code and other conditions of supply) Regulations, 2005 and SOP Regulations issued on dated 20-05-2014 clarified express feeder is as under:

*“Dedicated distribution facilities – means such facilities, not including a service line, forming part of the distribution system of the distribution licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises”.*

*“Express feeder” is a feeder emanating from the licensee's substation to connect to a single point of supply, which also includes dedicated distribution facility (DDF);*

The applicant's feeder is not an express feeder since more consumers are been given supply from the same feeder and his premises is not a contiguous premises.

13. Applicant said, it is crystal clear that applicant is connected on non express feeder since beginning.

14. Applicant said that, the Commission in the tariff order applicable from 01-06-2008 and further in clarification order said that,

*“Only HT industries connected on express feeders 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 industry”.*

15. Applicant said as per above directive the MSEDCL should have charged HT non continuous tariff to all the HT consumers and only HT industries connected on express feeders and demanding and given continuous supply should have been charged express feeder tariff. The clarification order has been issued with respect to the second part of Commissions above directives and directs that the demand of continuous supply & given continuous supply should be applied by the applicants only once in the year, within the first month after issue of the tariff order for the relevant tariff period. And non continuous tariff should have been charged from 01-06-2008 as no application for demanding continuous supply was made by applicant.

16. Applicant vide letter dated 28-08-2015 requested to change the tariff category to non continuous from the month of September-2015.

17. Applicant contended that respondent should have revise all the energy bills after 01-06-2008 till August-2015 considering and applying non express feeder non continuous supply tariff and MSEDCL should refund the excess amount paid by the applicant along with interest under section 62(6) of Electricity Act 2003.

Applicant reproduced the relevant portion of the Hon'ble Electricity Ombudsman Mumbai, issued order in case No.146 of 2009, Paul Strips and Tubes Pvt. Ltd. V/s. MSEDCL. (Ex.8).

*“13. In view of the aforesaid, the short question that arises for decision in the above background, is whether the Respondent was right in changing the Appellant's tariff category, from HT-I – Non continuous (not on express feeder) to HT-I –*



*Continuous Industry ( on express feeder). Commission’s tariff order applicable from 1<sup>st</sup> June,2008 as reproduced above, also provides the following note:*

*Note:*

*v. ....*

*vi. ....*

*vii. ....*

*viii. Only HT industries connected on express 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 industry”.*

18. Applicant referred other tariff clarificatory orders and explain the regulatory orders, as under,

14. *“The above provision, makes it clear as to which industries are to be deemed as HT continuous and which ones, as HT non continuous industries. The respondent’s argument is that the feeder on which the Appellant is supplied is an express feeder and it enjoys continuous supply. The Appellant disputes this claim. It says that there are several industries in the state which are catered on express feeders and billed at non continuous tariff as they may not have opted to get supply on continuous basis. Moreover, it clear from the above note that there are two requirements to be fulfilled before any industry is charged at continuous / non continuous tariff. They are :*

*a) HT Industry has to be connected on express feeder.*

*and*

*b) Such HT industries have to demand continuous supply.*

As seen, for charging HT-I continuous Industry tariff, both the above conditions are required to be satisfied”.

16. *“The Commission subsequent to the tariff order of 20<sup>th</sup> June, 2008, issued a clarificatory order on 12<sup>th</sup> September, 2008, directing the respondent to ensure that the clarifications given in that order, are implemented with effect from 1<sup>st</sup> June, 2008. The respondent, in turn, issued a commercial circular no.88 on 26<sup>th</sup> September, 2008, explaining main features of the order, as under:*

*“Applicability of HT-I (continuous industry):*

*In the tariff order, the Commission has specified 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 industry”.*

*Now Commission has 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 issue of the tariff order for the relevant tariff period.*

*In the present instance, the consumer may be given one month time from the date of issue of this circular for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.*

19. *“Records show that the appellant has not given any choice within one month from the said circular. This fact is not disputed by the non-applicant also. In such a situation, later part of the said circular stipulates what is to be done in case the choice is not exercised. In such an eventuality, the existing categorization of the*

*consumer is required to be continued. The existing tariff levied was “continuous tariff” until June, 2008. The appellant has not opted or demanded continuous supply was given to him from the express feeder. There is no such letter on record. Since the choice is not exercised, its existing categorization i.e. HT-I non continuous (not on express feeder) tariff, is bound to be continued in terms of the provisions in the clarificatory order and in the commercial circular no.88 of the respondent.”*

19. Applicant contented that, it is abundantly clear from the above order based on Commissions directives and Electricity Ombudsman observations that there are two conditions for charging HT tariff i.e. industry is to be connected on express feeder and such industry have to demand continuous supply & given continuous supply. The applicant does not satisfy both conditions i.e. he is neither connected on express feeder nor he has demanded continuous power or given supply after tariff order of Commission issued on June-2008. Applicant further contented that MSEDCL did not give continuous supply since there were continuous interruption and load shedding was also observed as per MSEDCL directives.

Applicant contented that, respondent is issuing wrong bills continuously from June-2008. The wrong doings once brought to the notice of authorities can not be continued under the garb of cause of action or time limitation. The Hon’ble Supreme Court of India issued an order in Civil Appeal No.5151-5152 of 2008 dated 13-08-2008 in case of Union of India V/s. Tarsem Singh in Supreme Court held that;

*4. The principles underlying continuing wrong and recurring / successive wrongs have been applied to service law disputes A continuing 3.*

*Wrong refers to a single wrongful act which causes a continuing injury. Recurring / successive wrongs are those which occur periodically, each wrong giving*

rise to a distinct and separate cause of action. This Court in *Balakrishna S.P.Waghmare V/s. Shri Dhyaneshwar Maharaj Sansthan* – [AIR 1959 SC 798], explained the concept of continuing wrong (in the contest of section 23 of limitation Act, 1908 corresponding to section 22 of limitation Act, 1963):

*“It is the very essence of a continuing wrong that it is an Act which creates a continuing source of injury and renders the doer of the Act responsible and liable for the continuance of the said injury. If the wrongful Act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the Act may continue. If, however, a wrongful Act is of such a character that the injury caused by it itself continuous, than the Act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful Act and what may be described as the effect of the said injury”.*

*In M.R.Gupta V/s. Union of India [1995(5)SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. The Court held: “The appellant’s grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he paid his monthly salary on the basis of wrong computation made 4.*

20. As per Hon’ble Apex Court order, it is clear that the wrong doing by the non applicant by charging 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 of action. (Ex.9).

21. Applicant stated that non-applicant may recover excess charges for electricity supplied to the consumer as per section 45 (1) and (2) of Electricity Act 2003 as well as contented that any excess recovery shall be refunded to the consumer along with interest as per section 62 (6) of Electricity Act 2003 and there is no time limitation factor and the refund of excess recovery by the licensee can not be time barred. Applicant further made reference to section 56(2), 126(5) and 126(6) there is no time limitation for recovery by the licensee in case the period of unauthorized use of electricity.

22. Applicant said that in light of above facts MSEDCL should revise all the energy bills from the month of August-2008 till August-2015 and refund the excess amount paid by the applicant along with interest under section 62(6).

23. As non-applicant violated the terms and conditions of tariff order of Commission, applicant registered his grievance in IGRC on dated 30-12-2015 and after lapse of more than 4 months IGRC neither heard the matter nor passed the order and hence the present grievance application filed under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

24. Non-applicant in his parawise reply accepted the facts about the connected load since 12-11-1993 and also given earlier history prior to change of name to M/s. Hindustran Udyog Ltd. as, amalgamation as Hindusthan Udyog Ltd. and change in name is executed by Superintending Engineer, NRC, MSEDCL, Nagpur vide dated

28-04-2010 and billed with industrial tariff.

25. Non-applicant made a reference to MERC tariff order dated 29-02-2006 effective from 01-04-2006 i.e. the two categories HT-1 continuous and HT-1 non continuous industry 33 KV Neco Jaiswal feeder is express feeder. Applicant is billed HT-1 tariff from October-2006. As consumer was well aware of the fact all other consumers connected on this feeder are HT-1 continuous industries.

As per MERC revise tariff dated 18-05-2007 w.e.f. 01-05-2007, an applicant was billed with tariff category Ht-1 continuous industry.

26. Non-applicant contented that w.e.f.01-10-2006 and 01-05-2007 of MERC tariff order rate for HT-1 continuous industry was less and rate for HT-1 non continuous industry was more and consumer did not raised any objection at that time.

Non-applicant referring to the tariff order dated 12-09-2008 in case No.72 of 2007 effective from 01-06-2008 it was stated that only HT industry connected on express feeder and demanded continuous supply shall be continuous industry given continuous supply while all other HT and HT non continuous industry. In clarification in order dated 12-09-2008 as under,

**1. *Applicability of HT-I (Continuous industry)***

*In the Tariff Order, the Commission has specified 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 industry”. (emphasis added)*

**Commission’s Ruling and clarification**

*The Commission is of the view that MSEDCL should not ignore the benefits 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 HT-I 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 issue of the Tariff Order for the relevant tariff period.** In the present instance, the 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 the specified period, then the existing categorization will be continued.*

27. Non-applicant said it is clear from the clarification in the tariff order, in case of change for category from continuous to non continuous the consumer has to give choice of continuous to non continuous as per order dated 12-09-2008. But consumer did not exercise his choice against HT-I continuous industry tariff. Subsequently also after tariff order dated 12-09-20010 applicant did not give choice between continuous to non continuous industry tariff. Non-applicant referring the Multi Year Tariff order was issued by MERC in the case No.121 of 2014 on dated 26-06-2015 which came in effect from 01-06-2015. It is mentioned that, “the consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply anytime during the financial year but only ‘once in the financial year with one month prior notice’”.

28. Non-applicant contented that consumer submitted option for change in tariff from continuous to non continuous on dated 23-07-2015 and MSEDCL changed the tariff of this consumer from the bill for the month of September-2015.

Non-applicant alleged that applicant is trying to mislead the forum between the terms dedicated distribution feeder and express feeder is defined in the MERC standard of performance of Distribution Licensees Regulations, 2014. Non-applicant further said that it is clear from the facts that the moment consumer submitted option for change in tariff from continuous to non continuous, it was changed.

29. Non-applicant contented that consumer is misleading the forum by requesting to revise all the energy bills from August-2008 to August-2015 considering and applying non express feeder tariff and refund the excess amount paid along with interest under section 62(6). The consumer did not raise any objection at that time and raised the grievance by filling application almost after 10 years i.e. on date 30-12-2015 after starting billing them with tariff HT-I continuous industry and requested to the forum for dismissal of the complaint.

30. Forum heard the arguments of both the parties and perused the documents on record and issues for our considering are –

A) Whether application dated 06-05-2016 is barred by limitation? - No

B) Whether supply of applicant can be categorized as on non express feeder and non continuous tariff category? - Yes

C) Whether applicant is entitle for the relief under section 62(6) of Electricity Act 2003? - Yes

Issue (A) Non applicant lastly in para 10 of his reply stated that applicant has filed the grievance before IGRC on dated 30-12-2015 i.e. almost after 10 years



MSEDCL started billing them with tariff HT-I continuous industries and demanding benefit from August-2008 i.e. almost from the period before of 8 years.

Non applicant indirectly raised the question that application is after 10 years and barred by limitation.

Applicant contented in para 18, that MSEDCL is issuing wrong bills continuously from June-2008. The wrong doings once brought to the notice of authorities can not be continued under the garb of cause of action or time limitation. The Hon'ble Supreme Court of India issued an order in Civil Appeal No.5151-5152 of 2008 dated 13-08-2008 in case of Union of India & Anr V/s. Tarsem Singh. In the same order reference was made to the Civil Appeal in M.R.Gupta V/s. Union of India [1995 (5) SCC 628]. From the above orders by the Hon'ble Apex Court, it is clear that the wrong doing by the non applicant by charging 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 bared by time limitation of cause of action. Forum rely the contention of the applicant in application with the above reported judgement of Hon'ble Supreme Court of India.

31. Non-applicant admitted that applicant made representation to IGRC on dated 3012-2015 almost after 10 years. The forum also rely on the order in review petition No.19/2014 decided on 29-10-2014 of M/s Sunder Rolling Pvt. V/s. Superintending Engineer, MSEDCL, Nagpur Urban Circle, Nagpur in which Hon'ble Electricity Ombudsman has discussed the issue of limitation of para 12, 13 & 14 and held that the law laid down in the said case and facts in the present case also are identical. And hence the present application can not be said to be barred by limitation on the cause of action. Forum refer the writ petition No.100/2015 decided on 22-01-2016

Shilpa Steel and power ltd. V/s. Superintending Engineer, MSEDCL, Nagpur Urban Circle, Nagpur and Hon'ble Electricity Ombudsman Bombay order dated 19-01-2012 in writ petition No.9455/2011 (Hindusthan Petroleum Corporation Nagpur V/s. MSEDCL & others). Hon'ble High Court observed that the terms has not defined in the CGRF & EO, Regulations, 2006 and several provisions of MERC (CGRF & EO) Regulations, 2006. Hon'ble High Court concluded that it is clear that consumer can not directly approached forum. The Hon'ble High Court further concluded that cause of action arisen only when IGRC does not redressed the grievance. In the present case IGRC neither ordered nor heard parties on application dated 30-12-2015 and present application is filed on 06-05-2016 and hence grievance is within limitation and can not be said to be barred by limitation of cause of action.

**(C)** Whether supply of applicant can be categorized as on non express feeder and non continuous tariff category?

Both the parties emphasized on definition of express feeder and dedicated distribution facilities which are defined in MERC (standard of performance of distribution licensee and period for giving supply and compensation) Regulations, 2014 in clause (l), & (m) is as under;

*(l) "dedicated distribution facilities" means such facilities, not including a service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises;*

*(m) "Express feeder" is a feeder emanating from the Licensees substation to connect to a single point of supply, which also includes dedicated distribution facility (DDF);*

32. Non-applicant in the reply stated that as per MERC tariff order dated 29-09-2006 effective from 01-10-2006 there were two categories HT-I continuous industries and HT-I non continuous industries were introduced by MERC and 33 KV Neco Jaiswal feeder being an express feeder this consumer was billed as per tariff category HT-I continuous industry from October-2006 and bills for the month of September-2006, October-2006 & November-2006 were issued. Non-applicant also stated that consumer was well aware of the fact that 33KV Neco Jaiswal feeder is express feeder at that time. Non-applicant further said that all other consumers connected on this feeder were also billed as per tariff category HT-I continuous industry. Non-applicant said that MERC tariff order was effective from 01-10-2006 and 01-05-2007, as the rate for HT-I continuous industries was less than HT-I non continuous industries. But consumer did not raise any objection at that time. This logic of non-applicant is not acceptable because every consumer tries to take benefit made available by Government or MERC.

33. Applicant contented that on the above feeder along with applicant there are other 4 Companies are given the supply. As per definition of express feeder, a feeder emanating from the Licensees substation to connect to a single point of supply which also includes dedicated Distribution facilities. Dedicated distribution facilities means such facilities, not including a service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises.

34. In view of the above, forum is of the opinion that even though non-applicant said express feeder and dedicated distribution facilities is inclusive part of express

feeder. It is clear that the non-applicant for the purpose of giving supply to the applicant, in absence of any other alternative might have given the supply from the express feeder. But to support his contention the non-applicant did not submit any documentary evidence before the forum that the demand of supply of the applicant was from express feeder and hence continuous supply was given to him. Hence contention of the non-applicant is not acceptable to the forum that the supply was express feeder or was demanded by applicant continuous supply.

35. Non applicant repeatedly stated that the supply was continuous tariff categories. Applicant filed letter dated 12-02-2007 issued by Superintending Engineer(NRC), Nagpur for implementation additional one day staggering holiday for Industrial / MIDC feeders. Applicant filed his letter dated 11-07-2007 address to non-applicant about poor quality of power facing the problem of power fluctuation but no action taken by non-applicant. Non-applicant's letter dated 24-07-2008 addressed to the applicant, for curtailment of electricity consumption by 10% considering the acute supply condition and further said that there may be possibility of increasing the load shedding also. Applicant's letter dated 01-09-2008 to non-applicant about power failure from the Jaiswal Neco feeder and production got affected and for failure, the non-applicant has not taken any action.

36. Considering the above correspondence it is clear that the supply of the applicant was not continuous, interrupted, staggering on many reasons with no. of power failures. It is also not the denied by the non-applicant that above situation was for a particular period only and after that the supply was totally continuous. Hence applicant's supply can not be termed as continuous supply but as non continuous

supply. In tariff order of the Commission applicable from June-2008 in which it is mentioned 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 industry”.*

37. As discussed earlier, non-applicant failed to prove that applicant is HT industries connected on express feeder with dedicated Distribution facility and demanded continuous supply and given continuous supply by way of documentary evidence.

In the 2<sup>nd</sup> part of Commission’s order, it is stated that all other HT industrial consumers will be deemed as HT non continuous industries. From the correspondence of both the parties, it is proved that supply was non continuous. From the word “ being HT non continuous industry empathetically clear that the Commission has fixed responsibility on non-applicant to categories HT industries consumer as HT non continuous industries other than the Industries connected on express feeder & demanded continuous supply & given continuous supply.

38. The Commission, in June-2008 had fixed the responsibility on non-applicant to categories HT industries and others to be given HT non continuous industries. Hence considering the submission of the applicant and arguments of the non-applicant that applicant has not applied for change of tariff in the first month after issued of tariff order is baseless because supply of applicant was non continuous and option was to be exercised by these consumers fed from express feeder with

continuous supply. Further in MERC's order, the choice was given to the HT industries consumers to apply in case they are under the category of the continuous to non continuous supply but since beginning applicant contented that his supply was non continuous which is already discussed in the above paras and when he was getting non continuous supply, the question of applying for change of continuous to non continuous categories does not arise. Besides clear directives from MERC being a deemed effect, non-applicant did not acted to change the category to non continuous and wrong bills were every month issued and hence applicant filed letter on dated 28-08-2015. Applicant requested non-applicant for change of tariff category to non continuous and MSEDCL changed the tariff of the applicant from the bill for the month of September-2015.

Non-applicant totally failed to provide the documents of HT consumer agreements and other relevant necessary documents along with reply or during arguments demanded by forum in the interest of justice and proper disposal of application.

39. Applicant filed the copy of the order issued by Electricity Ombudsman Mumbai in representation No.146/2009 in the matter of HT continuous tariff in case, M/s Paul Strips and Tubes Pvt.Ltd. V/s. MSEDCL. In that representation Hon'ble Electricity Ombudsman discussed all aspects of the Commission's orders and in its conclusion that appellant consumers is entitled to application of HT-I industries non-continuous tariff with effect from 2008, " and respondent is directed to refund excess amount along with interest @ Bank as stipulated in the section 62(6) Electricity Act 2003".

Applicant also filed the copy of the order of Hon'ble Electricity Ombudsman Nagpur in review petition No.2/2014 case no.19/2014 decided on 19-10-2014 in case

M/s Sunder Rolling Pvt.Ltd. V/s. Superintending Engineer, NUC, MSEDCL, Nagpur in which Hon'ble Electricity Ombudsman categorically discussed on the issue identical to the present applicant and in conclusion directed respondent to change the category of the applicant to HT-I non continuous industry as well as directed to revise the bills from August-2008 and refund the excess amount along with interest as per section 62(6) Electricity Act 2003.

40. We rely on the above orders Hon'ble Electricity Ombudsman, Bombay as well as Nagpur. We are of firm opinion that considering bills effect vide circular of MERC applicable from June-2008, it was duty of the non-applicant to give the deem effect to the applicant by changing the HT continuous industries to HT non continuous from 01-06-2008 as per deemed provision in the tariff order and hence applicant can be categorized as HT non continuous industry consumer as his supply is on non express feeder.

(C) Whether applicant is entitled for relief under section 62(6) of Electricity Act 2003?

In view of the above observation and orders of Hon'ble Electricity Ombudsman and provisions of MERC tariff orders applicant is entitled for refund of difference between HT continuous industries and HT non continuous industries tariff as per under section 62(6) of the Electricity Act 2003 with interest at the Bank rate.

41. Hence the following order.

#### ORDER

1) Grievance application is allowed.

- 2) Respondent is directed to review the energy bills of the applicant from 1<sup>st</sup> June-2008 to September-2015 and refund the excess amount paid by the applicant along with interest as per section 62(6) of Electricity Act-2003 within 60 days as the category of applicant is already changed from September-2015.
  - 3) Compliance the report to be submitted within 60 days from the date of this order.
  - 4) No order as to cost.”
- 

**64. In view of the majority, we hold that there is no force in the grievance application and therefore an application deserves to be dismissed. Hence we proceed to pass the following order.**

**ORDER**

- 1) Grievance application is dismissed.**
- 2) No order as to cost.**

Sd/-  
**(Shri.N.V.Bansod)**  
MEMBER

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

sd/-  
**(Mrs.V.N.Parihar)**  
I/C. CHAIRMAN



