

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

Case No. CGRF(NZ)/26/2018

Applicant : M/s. Suruchi Spices Pvt. Ltd,
Kh. No. 55/1,Nr.Umiya Industrial Estate
Nr. Pardhi Octroi naka,Bhandara Road,kapsi Khurd
Nagpur -441104.

Non-applicant : Nodal Officer,
The Superintending Engineer,
Nagpur Rural Circle, MSEDCL,
Nagpur.

Applicant represented by :- Shri Ashish Subhash Chandarana,

Non-applicant represented by :-1) Shri R.K Giri,E.E(Adm),NRC, MSEDCL,
Nagpur.
2) Shri N.M. Gulhane,Dy.EE,NRC,MSEDCL,
Nagpur

Quorum Present : 1) Shri Vishnu S. Bute,
Chairman.
2) Shri N. V. Bansod,
Member,
2) Mrs. Vandana Parihar,
Member/Secretary

COMMON ORDER PASSED ON 21.06.2018

1. The grievance application is filed on 31-03-2018,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 filed reply and denied the case of the applicant.
3. Forum heard arguments of both the sides on dt.02.05.2018,05.06.2018,12.06.2018 and perused record.

4. Applicant M/s. Suruchi Spices Pvt. Ltd, bearing Consumer no. 430019005060 submitted that earlier their supply was on 11 KV but it was causing frequent interruptions due to inefficient distribution system, in violation of section 42 of EA 2003. In absence of option, on suggestion of MSEDCL's officer, they agreed to get shifted on 33 KV for better quality supply, but It was mandatory to take minimum 1500 KVA load for getting supply on 33 KV Voltage as per SoP regulation 2014, and therefore they applied for single connection of 1515KVA,it was released on 08.09.2010 by surrendering their other two industrial connections i.e. M/s. Suruchi Cold Storage Pvt. Ltd and M/s. Ganesh Friding Cold Storages Pvt. Ltd. As per applicant, MERC order dated 12.09.2010 passed in case no.111 of 2009,wherein MERC accepted MSEDCL's prayer to widen applicability of Ag. Tariff to pre cooling and cold storages from 01.09.2010. Applicant reproduced extract of MERC order dated 12.09.2010 in case No 111 of 2009 as below,

“LT IV:LT-Agricultural Applicability Applicable for motive power services exclusively for Agricultural pumping Loads and pre-cooling and cold storage for Agricultural Produce on LT supply.

HT V: HT- Agricultural Applicability for High Tension Agricultural Loads, including HT Lift Irrigation Schemes(LIS)irrespective of ownership and also for (i) Poultry,(II) High Tech Agricultural purpose,(III) Pre-cooling and Cold Storage for Agricultural Produce. It shall be applicable irrespective of whether pre cooling and cold storage are being used by farmers or traders and irrespective of ownership pattern.

Hence, applicant pleaded that due to this ruling, as MERC had widened applicability of AG tariff by making Ag. Tariff applicable to cold storage also, their two merged connections M/s. Suruchi Cold Storage Pvt. Ltd Permanently

Disconnected (PD on dt.13.04.2010) and M/s. Ganesh Friding Cold Storages Pvt. Ltd. (PD on dt 08.09.2010) were entitled for HT V Agricultural Tariff w. e. from 01.09.2010.

5. To substantiate his contention applicant rely on circular no.124 of Corporate office of MSEDCL released on 14.10.2010 for implementation of tariff by virtue of regulation 13 of supply code 2005, wherein it was specifically instructed that, *“Filed officers are directed to ensure that wherever the tariff category is redefined or newly created by the commission, existing / prospective consumers should be properly categorized by actual filed inspection immediately and the data to be immediately updated in the IT database”*

Hence he submitted that, it was the duty of non-applicant to pass credit of bill revision for Sept 2010 for the PD connections for cold storages i.e. M/s. Suruchi Cold Storage Pvt. Ltd and M/s. Ganesh Friding Cold Storages Pvt. Ltd. They should have ensured the segregation of recording of consumption of their cold storage units which are finally merged in one connection as M/s Suruchi Spices Pvt.Ltd. by adopting facility of MR-10 from Industrial units. Applicant therefore pleaded that as non-applicant failed to implement tariff order by ensuring MR-10 facility to record activity wise consumption, applicant represented the issue vide letter dated 03.01.2011 and submitted requisite undertaking on 31.01.2011. They sought to effect the change in tariff and requested for separate recording of consumption by non applicant to effect change in tariff as well as separation of recording of consumption for different purpose as per above tariff. He further pleaded that as per regulation 9.2, non-applicant should have effected implementation of Ag. Tariff from second billing cycle of the applicant but he alleged that same is not done by the non-applicant.

6. He further submitted that as per applicant's undertaking dt.31.01.2011, detailed inspection of M/s Suruchi Spices Ltd. having consumer no.430019005060 at Village Kapsi (Kurd) was carried out on dt 23.3.2011 for proposed MR-10 facility to record the consumption of their Cold storage activity of both permanently disconnected storage i. e. M/s Suruchi Cold Storage Pvt Ltd. having consumer no.410039007330 and M/s.Shree Ganesh Fridging and Cold Storage Pvt.Ltd. having consumer no.430019005050 separately and thereby application of separate tariff. At the time of inspection, in minutes of meeting MR-10 facility was proposed for recording of cold storage consumption and effecting the same in billing on 23.03.2011. But it was again not implemented by non-applicant. Instead the non-applicant issued letter seeking payment of Rs.200/-towards cost of Agreement on 25.01.2012. The same was paid by the applicant on 25.01.2012. Therefore, applicant pleaded that he is entitled for MR-10 facility retrospectively.

7. Again on 21.03.2012 fresh Inspection was carried out by NA and fresh minutes of meeting was prepared, wherein Instead of MR-10 facility, separate connections were proposed by non-applicant without specifying the need or reason and which was never requested by applicant and that too without giving advance notice.

8. Applicant submitted that matter was pursued vide letter 25.06.2015, 05.08.2015. In between fire took place in Ganesh Fridging and cold storage Pvt.Ltd. on 08.05.2013 resulting heavy financial losses to the applicant. Finally on 25.08.2016 separate connection for Cold Storage was released. As such he pleaded that the single connection was sanctioned for industrial purpose and the consumption of their cold storage activity was also charged within the ambit of Industrial tariff, but the need of separate recording of consumption arises on account of MERC order dt.12.09.2010

passed in case no.111 of 2009. In the circumstances it was duty of non-applicant to effect the change in tariff as per regulation 13 of supply code by installing MR-10 facility SuoMoto. The matter was kept pending for 6 years. There was no need for multiparty agreement when existing entity was one, the situation was well within the scope of MR-10 Facility.

9. Therefore applicant prayed for directions for refund of excess tariff charges recovered in violation of tariff order passed by MERC and regulation 13 of ESC 2005 towards consumption of cold storage with Ag. tariff with interest @ PLR of SBI read with section 62 (6) and PSTEL order in appeal No 47 of 2001 and any other relief as to cost and action against errant officials of NA.

10. Non Applicant in their reply raised issue of Locus to file the grievance of Suruchi spices Pv. Ltd. and limitation. They have submitted that entire grievance is about rejection of MR-10 facility to M/s. Suruchi Cold Storage. Whereas the instant grievance application is filed by M/s. Suruchi Spices Pvt. Ltd. and they are two different entities in the eye of law. They are having different SSI registration. Therefore M/s.Suruchi Spices Pvt.Ltd. has no locus to file this grievance application and deserves for rejection without going into merit. They also submitted that IGRC has already rejected the instant grievance application on 15.03.2018.

11. Non applicant contended that, Hon'ble High Court's order dated 10.07.2013 passed in Writ Petition No. 1650/2012, MSEDCL V/s Mukund R. Salodkar disagree with the view taken in the matter of M/s. Hindustan Petroleum Corporation Ltd. Hon'ble High Court observed in Para 10 that, "*in my view, the consumer ought to have*

approached the Forum within two years from the date of cause of action”.

Therefore, on this count only the instant application should be rejected without going into the merit of the application, on the ground of Limitation as per Regulation No. 6.6 of the MERC (CGRF & EO), Regulations, 2006.

12. Non-applicant further contended that the applicant initially had 3 HT connections on 11 KV. As per the request of the applicant a single connection in the name of M/s. Suruchi Spices Pvt. Ltd. was released on 08.09.2010. Rest two connections viz., M/s. Suruchi Cold Storages Pvt. Ltd. and Ganesh Freezing and cold storages Pvt.Ltd. were made P.D. Therefore, at the time of Hon'ble MERC Order dated 12.09.2010 there was only one Industrial Connection in existence. Non-applicant also denied that the MSEDCL officials suggested the applicant to shift from 11 KV Line. This allegation is made without any basis or documentary evidence. In fact, it was the professional need of the applicant's industry which compel him to shift from 11 KV to 33 KV Voltage level

13. Non-applicant also submitted that, the MSEDCL billing is based on demand based TOD tariff. Further, Hon'ble MERC has not specifically mentioned to grant the facility of MR-10 in this situation whereas Hon'ble MERC specifically mentioned to grant this facility to separate Residential Quarters within the Factory & Residential and Commercial Complexes in HT-VI Categories. Further, in the light of the request of the applicant for providing MR-10 facility, the MoM dt. 23.03.2011 has been signed subject to the approval of their Corporate Office. But instead of MR-10 facility their Corporate Office has given approval for Tri-Party Agreement on

14.09.2011. Further they stated that as M/s. Suruchi Spices Pvt. Ltd. & M/s. Suruchi Cold Storage are two different entities having separate SSI Registration, it is not justified to provide MR-10 facility to two separate entities. The MSEDCL has therefore rightly executed the Tri-Party Agreement before releasing the electricity connection.

14. Non-applicant specifically submitted that the applicant in his letter dated 15.07.2016 accepted the responsibility of delay caused for execution of Tri-Party Agreement due to Major Fire happened in their Cold Storage. Therefore, in the light of applicant's admission, they cannot be held responsible for the delay caused for releasing connection for implementation of Ag. tariff for cold storage units. For execution of Tri-Party Agreement, after payment of the cost of Agreement of Rs. 200/- on dt.25.01.2012, it is the applicant who delayed to complete requisite formalities causing further delay in release of connection. Hence the non applicant prayed to reject dismiss the grievance application in the interest of justice.

15. It is noteworthy that there is difference of opinion amongst three members of the Forum. Therefore the judgment and the decision is based on majority view of the Chairperson and Member Secretary. Whereas dissenting note of Member (CPO) is noted in the judgment and it is part and parcel of the judgment.

Dissent Note dated 20.06.2018 in case No 26 of 2018, M/s. Suruchi Spices Pvt. Ltd. By Mr. Naresh Bansod Member CPO

- 1) Arguments of Both parties heard in detail on 12.06.2018 and perused all the papers / documents on records. This case before forum is in which IGRC did not passed order within 60 days and applicant approached before CGRF. IGRC

is appointed by distribution licensee MSEDCL as per MERC (CGRF & EO) Regulation 6.1. It was mandatory to redress the grievance within 2 months but not redress the grievance in question. Such type of attitude of IGRC needs to be condemned and it may be under the influence of their own official.

2) The points for my consideration are as under:-

a) Whether the present complaint is within limitation? Yes

Applicant said, as per regulation 6.6 of MERC CGRF & EO regulation 2006, the forum shall not admit the grievance unless it is filed within two years on which the cause of action has arisen. Applicant filed application before IGRC on 19.01.2018 and 60 days completed on 20.03.2018 and cause of approaching for approaching forum arises on 21.03.2018 and hence application is within limitation. OP said IGRC rejected applicant on 15.03.2018. Applicant relied upon judgment of Hon'ble Bombay High Court in matter of HPCL Vs MSEDCL and MSEDCL Vs. Shilpa Steel. NA in reply at Para 3 relied on judgment of Hon'ble High court in its order dated 10.07.2013 in writ petition 1650/2012, MSEDCL Vs. M.R.Salodkar, Disagreeing with view taken in the matter of HPCL and observed in Para 10 that , "in my view the consumer ought to have approach the forum from the date of cause of action". NA submitted that application be rejected on this count without going into merit of application as per regulation 6.6. Of MERC CGRF & EO regulations 2006.

NA relied on single judge of the High Court Mr.A.V. Nirgude as noted above denying the view taken by division bench of Bombay High court announced by Justice G.S.Godebole in petition of HPCL Vs. MSEDCL order dated 19.01.2012.

Applicant relied on Judgment of Hon'ble Bombay High Court Nagpur bench in WP No 3997 of 2016 MSEDCL Vs. Shilpa Steel And Power Ltd challenging the order of EO on point of cause of action arisen from the date of rejection of grievance from IGRC. In this case, as per NA, IGRC rejected the application on 15.03.2018 and hence the cause of action has arisen on 16.03.2018. It is very funny that in WP of M.R.Salodkar as well as Petition of Shilpa steel and Power, the advocate of MSEDCL was adv.S.V.Purohit but he did not prefer to rely to rely on judgment of M.R. Salodkar and as well as objected the view on Judgment of HPCL and accepted the fact of reliance on the judgment or view in HPCL. Hon'ble Justice Ku. Indira Jain has accepted the view in petition of HPCL of the division bench of Bombay High court and conferred the view taken in the HPCL order that the cause of action aroused when IGRC rejected the complaint of complainant as well as

rejected the WP filed by MSEDCL on point of cause of action & so also limitation and the same is not challenged before Hon'ble Supreme Court after order in WP 3997 of 2016 odder date 18.07.2017 and NA complied the subsequent order of EO in review petition.

The latest judgment of 18.07.2017 of Nagpur bench of Bombay High court will always prevail and EO Nagpur and consistent view taken in HPCL & Shilpa Steel is relied by EO Nagpur, Bombay cannot be negatived by observations in WP 1650/2012 dated 10.07.2013.

EO also relied on HPCL as well as Petition of Shilpa Steel and orders were accepted in number of cases and complied by NA and hence NA cannot take u turn now just to protect the litigation. For the sake of clarity on entire issue of cause of action and limitation, applicant further relied upon judgment of Hon'ble Supreme Court of India in Civil appeal No 3699 of 2006 order dated 12.02.2016 Rashtriya Ispat nigam Ltd Vs Prathyusha Resourses and Infra Pvt.Ltd. Apex Court in Para 5 of page 4 observed as under.

“We shall now consider the settle law of the subject. This court in a catena of judgment has laid down that cause of action arises when the real dispute arises i.e. when one party asserts and other party denies any right.” The cause of action in present case is the claim of Respondent / claimant to determination of base year for the purpose of escalation and calculation made thereon and the refusal of appellat to pay as per the calculations”.

Appellant allege and it is necessary to record that NA have never relied upon cause of action during proceedings before IGRC and IGRC in its order not decided on cause of action and hence it can be inferred that it is afterthought attempt and also failed to prove with legal provision.

I rely on the judgment of Appellate Tribunal of electricity (Appellate jurisdiction) appeal No 197 of 2009 order dated 11.03.2011 in the matter of MSEDCL Vs. MERC and 8 others. In detailed and reasoned order in belatedly filed petition, after a gap of 9 years. Para 10 of the order on page No 12 and 13

“It cannot be debited that electricity act is a complete code. Any legal bar or remedy under the act must exist in the act. If no such Bar to the remedy is prescribed under the code, it would be improper to infer such a bar under the limitation act. Admittedly there is no provision

this act, prescribing the bar relating to limitation. That apart, this question is already been decided by the Supreme Court that limitation act would not apply to quash judicial authorities like state commission. This has laid down in AIR 1976, SCC 177, AIR 1985 SCC 1279, AIR 2000 SCC 2023, 2004, VOL 2 SCC 456 and 1985 (Vole II SCC 590. Further it has been held by Hon'ble Supreme Court in Madras Port trust Vs. Himanshu International reported in (1979) 4 SCC 176 that Public authorities ought not to take technical plea of limitation to defeat the legitimate claims of citizens".

The extract of relevant judgment is also reproduced by APTEL in its order.

As per Supreme Court, the Limitation could not apply to quasi judicial authorities like state commission. It was further held that public authorities not to take technical plea of limitation to defeat the legitimate claims of citizens. In view of the above observations, the plea of non applicant on point of cause of action and bar by limitation is failed as CGRF is the quasi judicial authority under the EA 2003 & otherwise also cause of action is aroused in this case on 16.03.2018 and rejection of grievance of IGRC on 15.03.2018 and grievance application is well within limitation because NA totally failed to demonstrate and mentioned the date of cause of action.

B) Whether M/S SURUCH SPICES PVT LTD has locus to file present grievance application as it's speak about rejection of MR-10 facility to M/S SURUCHI Cold storage? Yes

Simply at first glance because MSEDCL at their own disconnected three industrial establishment and provided supply to all the three industries through single connection and raised the bill of thee industries in one name and received the payment from one entity so I found its ablsutely right on part of applicant. NA stated that grievance application speaks about rejection of MR-10 facility which is denied by applicant as incorrect, As per applicant, grievance is related to non implementation of MERC tariff read with regulation 13 of ES code 2005 which pertains to classification and reclassification of consumers into various commission approved tariff categories and responsibility of MSEDCL. No such rejection letter of MR-10 is placed on record. On the contorary, some material placed on record proves Mr-10 was granted earlier and later withdrawn

NA raised the contention of Locus standi of M/ S SURUCH SPICES PVT LTD as such the cold storages are registered as M/S SURUCHI COLD

STORAGES PVT LTD and M/S SHREEGANESH FRIDINGING AND COLD

STORAGES PVT LTD. (This aspect is intelligently concealed by the NA before the forum). Applicant has appreciated the admitted mistake on part of MSEDCL by merging all the three connections and providing supply for single connection to rest of two consumers M/S Suruchi Cold storage Pvt. Ltd and Shree Ganesh Fridging Pvt. Ltd by taking board resolutions of both the companies. Applicant alleged that since MSEDCL allowed the disconnection of two connections and connecting it on Suruchi Spices Pvt. Ltd by taking NOC of the both the cold storages and billed all the three consumers under the single name only i.e. M/S SURUCH SPICES PVT LTD and non applicant billed it years together and received payment regularly.

Applicant further emphasized that connections were authorized connection being sanctioned one by NA and NA submission as well as argument failed. Secondly law of estoppels prohibits MSEDCL from making such submission, hence contention of NA on point of Locus is hopelessly not sustainable and appears to be afterthought as the same was not raised before IGRC and CGRF is the appellate forum of IGRC, NA should have raised the objections before IGRC first. On this count also, the submission is not maintainable.

3. As per applicant, grievance is regarding not effecting change in tariff post MERC order and applicant said the legal position in relation to applicability of tariff i.e. MERC has notified ESC 2005 on 20.01.2005 and in compliance of section 50 EA 2003 and regulation 13 of ESC 2005 reads as hereunder:-

Regulation 13: classification and reclassification of consumers into tariff categories:-

***The distribution licensee may classify or reclassify a consumer into various commission approved tariff categories based on the purpose of usage and supply by such consumer.
Provided that the DL shall not create any tariff category other than those approved by the commission.***

3) Applicant submitted that it is responsibility of DL to effect the change in tariff upon MERC order amending or creating the applicability read with regulation 13 of ESC 2005. It is necessary to open the eyes of NA on note,

the instructions given by DoP vide circular on 5.09.2012 on page 8 Para 4 as well as before this

4) also

“Filed officers are directed to ensure that wherever the tariff category is redefined or newly created by the commission, existing / prospective consumers should be properly categorized by actual filed inspection immediately and the data to be immediately updated in the IT database”

5) Applicant referred MERC order dated 12.09.2010 in MERC case No 111 of 2009 ordered as given below that

“It shall be applicable irrespective of whether pre cooling and cold storage are being used by farmers or traders and irrespective of ownership pattern (ANNEXURE A-2). Applicant pleaded that earlier applicability of Ag. Tariff to cold storage by abolishing limited applicability of cooperative society is winded from 01.09.2010 and it will not be early to infer that Ag. Tariff is applicable to cold storages like applicant.

6) Applicant submitted that earlier supply was from 11 KV line causing frequent interruptions due to inefficient distribution system in violation of section 42 of EA 2003 and in the absence of option, on suggestion of MSEDCL officer to get shifted on 33 KV for better quality supply, it was mandatory to take 1500 KVA load on 33 KV line as per SoP regulations (ANNEXURE a-13) and thus single connection of 1515KVA by surrendering two other cold connections was released on 08.09.2010 i.e. M/S/ SURUCHI COLD STORAGE PVT LTD and M/S GANESH FRIDING COLD STORAGE PVT LTD. As Per applicant as referred MERC order dated 12.09.2010 effective from 01.09.2010 was Ag. Tariff to pre cooling and cold storage owned by applicant i.e. HT Ag. tariff w.e.f. 01.09.2010 but in spite of implementation of tariff by virtue of regulation 13 of supply code 2005, it was the duty of NA to pass credit of bill revision for Sept 2010 by ensuring segregation of recording of consumption of separated activity by adopting separate recording consumption MR-10,

7) Applicant submitted that NA failed to implement tariff order by ensuring MR-10 facility to record activity wise consumption. Applicant represented the issue vide letter dated 03.01.2011 (A-4) FOLLOWED BY Undertaking dated 31,01,2001 (A-5) as sought by non applicant to effect change in tariff as well as separation of recording of consumption for different purpose as per above tariff and as per regulation 9.2, NA should have effected it from second billing cycle of the

application or implementation of ag. Tariff (A-6) which is not done by NA, as per applicant, as per detailed inspection and minutes of meeting MR-10 was proposed to affect the recording of cold storage consumption and effecting billing on 23.03.2011 (ANNEXURE A-7).

- 8) As per applicant, CE Comm. in his letter dated 14.09.2011 in response to letter of SE NRC dated 25.07.2011 The subject matter is Sanction and release of power supply to group of HT connections by executing multiparty agreement in respect of M/S SURUCHI SPICES PVT LTD (A-8), Applicant said as per Annex A-10 & A-11 i.e. as per letter of NA, Rs. 200/-cost of agreement paid on 25.01.2012 and applicant was thus entailed for MR-10 facility retrospectively but due to inaction on part of NA, again inspection was done on 21.03.2012 and fresh minutes of meeting were prepared (A-12) without giving advance notice as per ESC 2005 and without specifying the need or reason but instead of separate connections were proposed which was never requested by applicant.
- 9) Applicant submitted that matter was perused vide letter 25.06.2015, 05.08.2015 (A-13 and 14). **In between fire took place in Ganesh Fridging and cold storage Pvt.Ltd. on 08.05.2013 resulting heavy financial losses** to applicant. NA on 25.08.2016 released the separate connection for remaining cold storage M/S SURUCHI COLD STORAGE PVT.LTD. and ag. Tariff was made applicable. But heavy burden of high tariff could have been avoided by applying MR-10 facility for recording separate consumption. Applicant prayed for directions for refund of excess tariff charges recovered in violation of tariff order passed by MERC and regulation 13 of ESC 2005 towards consumption of cold storage with Ag. tariff with interest @ PLR of SBI read with section 62 (6) and PSTEL order in appeal No 47 of 2001 and any other relief as to cost an action against errant official of NA
- 10) NA reply Para 1 and 3 of reply raised issue of Locus to file the grievance of Suruchi spices pvt ltd and limitation and cause of action respectively and both the issues are discussed in beginning and concluded that applicant has locus to file the grievance and grievance is not barred by limitation and hence no need to analyze again. Contention of NA before IGRC and CGRF ore less or more same except inclusion of cause of action on point of limitation which is afterthought and NA miserably failed to prove his contention.
- 11) NA in their reply stated that initially 3 HT connections of 11 KV were there but on request of applicant, a single connection in the name of M/S SURUCHI SPICES PVT LTD was released on 08.09.2010 and two other connections of

cold storages were made PD and at the time of merging all the connections. At The time of MERC tariff order dated 12.09.2010, only one industrial connection was in existence. But applicant in Para 9 itself submitted that due to inefficient distribution system without any option, they agreed with the suggestion of NA to shift from 11 KV to 33 KV by merging all the three entities for better quality supply and on this count of request of applicant, submission of NA is baseless and it is a duty of NA to provide efficient distribution system even though denied in Para 4 by NA. NA submitted that tariff along is TOD based with demand based and MERC has not specifically mentioned to grant facility of MR 10, which is totally incorrect submission as applicant in Para 13 vide instruction No 5 catergocllay specified that existing and prospective consumes should be properly categorized by actual field inspection., Hence it is proved that NA and his staff totally failed to inspect from 01.09.2010 and reclassify the consumer as per usage and tariff i.e. ag. Tariff. Further MR-10 is arrangement to record consumption if one consumer is having two different applicable tariff.

- 12)NA further to deviate and misguide the forum, stated that separate resi. quarter within factory premises and residential and commercial complexes in HT VI category which deserves to be discarded considering the factual use of MR-10
- 13)NA further stated that on the request of Applicant for providing MR-10 facility, MoM dated 23.03.2011 was signed subject to approval of HO is also false because in MoM dated 23.03.2011, nothing is mentioned like subject to approval and also no such rejection letter of HO is produced on record. Hence submission is baseless. On the contrary the Above MR 10 facility is required only to record the consumption of above referred cold storages by MR-10 with a view to comply with MERC tariff order by effecting ag. Tariff. tariff. tariff for the consumption of both the tariff order from 08.09.2010 to 25.08.2016 by applying ag. Tariff.
- 14)NA in their reply vide para 7 submitted that delay was due to major fire happned at applicant premises. The document place on record shows that applicant is perusing since JAN 2011, Joint inspection and MoM is done on date 21.03.2011 & agreement charges were paid on 25.01.2012 whereas fire took place on 08.05.2013. I.e. after one year and three months from payment of agreement charges & hence it appears that NA is trying to get shelter of tragedy happened with applicant's establishment.

- 15) In view of the above observations, it is clear cut case of violation of regulation 13 of ESC 2005 and regulation 9.2 of SoP regulations and MERC tariff order dated 12.09.2010 eff. from 01.09.2010 by NA with its ulterior motive which is deficiency in service on part of NA.
- 16) Lastly it will not be out of context to note that recently joined EE Admin NRC Mr. Giri on 12.06.2012 specifically admitted and submitted before the forum during the arguments that such type of situation of Mr-10 should not have been arisen on the contrary Executive engineer said all such situation in his earlier place of posting were sorted out promptly with the guidance of superintending Engineer. The submission of EE as above itself speaks about arbitrary and discriminatory working of officials of NA at NRC Nagpur.
- 17) Applicant during hearing had requested to get copies of all documents of M/S Suruchi Spices Pvt. Ltd. NA provided the same belatedly after last chance granted by forum. Applicant consumer from the said documents produced the documents which proved that NA under the signature of SE NRC lied before forum. In fact MR-10 facility was released to consumer in May 16 but it appears that later it was withdrawn hence the submission of SE NRC Nagpur that such facilities cannot be provided proved false on record. Additionally applicant had produced document proving that MR-10 facility was sanctioned by SE NRC to Melghat Cold storage Pvt. Ltd. during identical period. Further applicant produced number of bills of Poshak Agrivets of Amravati wherein MR-10 facility was provided to record commercial consumption and hence the act of SE NRC needs to be condemned
- 18) In view of the above finding, I am of the firm view that the application of the applicant deserves to be allowed and IGRC order deserves to be quashed and set aside as it is passed without considering the factual aspects, regulations and spirit of tariff. Considering the fact that MSEDCL have installed MR-10 sub meters but later removed it and thus having no data of consumption of cold storage. In the absence of meter reading for Ag consumer, as per the provisions of supply code, the average consumption of last 12 month prior to disconnection of M/s Suruchi cold storage Pvt. Ltd and M/S Shree Ganesh Fridging & Cold storage Pvt. Ltd would serve the purpose for future estimation in the interest of justice

Hence the following order.

ORDER

1. NA IS directed to refund the excess tariff recovered from 01.09.2010 till 24.08.2016 (difference of industrial and ag. tariff) along with interest @ PLR of SBI.
2. The consumption of cold storage shall be determined on the basis of average consumption of last 12 month prior to disconnection of both cold storage. The consumption of Shree Ganesh Fridging & cold storage should be considered till the date of fire only.
3. The order of IGRC is quashed and set aside.

Naresh Bansod
Member (CPO)

16. Reasoning and finding of majority view of the Chairperson and the Member Secretary of the forum.

According to the Regulation 6.6 of the said Regulation “**Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen**”. In this case it is the contention of applicant that it was the duty of MSEDCL to effect the change in tariff as per MERC order dt.12.09.2010 in case NO.111 of 2009 and regulation 13 of supply code 2005 by installing MR-10 facilities *Suomoto*. Therefore cause of action arose from the date on which payment of Rs.200/-towards cost of Tri-party Agreement was paid by applicant i.e. on 25.01.2012. That time non-applicant denied the facility of MR-10. Therefore it was necessary for the applicant to file grievance application before 2 years i.e. on or before 25.01.2014. Present case is filed on 31-03-2018 i.e. after almost four years of expiry of period of limitation. Therefore it is hopelessly barred by limitation.

9. Applicant argued that he filed grievance application before I.G.R.C. on 19.01.2018. So the present grievance is within limitation. However, we do not agree with this argument because the date of filing of application before I.G.R.C. is not relevant. It is immaterial when anybody file grievance application before I.G.R.C.

The relevant date of calculation of limitation is the date of cause of action within the meaning of regulation 6.6. The cause of action arose on 25.01.2012. Therefore limitation starts from the date of cause of action i.e. 25.01.2012. We find no force in the contention of the applicant that merely because he filed grievance application on 19.01.2018 before I.G.R.C. any special concession can be given to him.

10. It is noteworthy that date of filing of application before I.G.R.C. specially in time barred cases is irrelevant because if the matter is time barred, according to regulation 6.6 with fraudulent intention, to bring time barred case within limitation any consumer may knock the door of I.G.R.C. at belated stage and may claim to calculate the period of limitation from the date of filing the application before I.G.R.C. But is not a legal concept. It is misconception and misinterpretation of the relevant provisions laid down under regulation 6.6 of the said regulations. Therefore grievance application filed by the applicant at belated stage before I.G.R.C. on 19.01.2018 will not help the applicant to bring the time barred cases within limitation.

11. Representative of applicant relied on the Hon'ble High Court ruling as mentioned in his application. We have carefully perused all the rulings cited by the applicant. However, facts of the present cases are totally different and distinguishable. Therefore authorities relied upon by the applicant are not applicable to the case in hand.

12. Therefore we hold that grievance application is barred by limitation according to regulation 6.6 of MERC (CGRF & EO) Regulation 2006.

13. So far as merit of the case is concerned, it is contended by non-applicant that the facility of MR-10 was required for recording separately consumption of cold storage units due to applicability of Ag tariff (cheaper rate

Tariff as compared to industrial tariff) to cold storage as per MERC's order 12.09.2010. These cold storages by names M/s Suruchi Cold Storage Pvt. Ltd. (PD on dt.13.04.2010) and M/s. Ganesh Friding Cold Storages Pvt. Ltd. (PD on dt 08.09.2010) was permanently disconnected and were merged with M/s Suruchi Spices on dt.08.09.2010. After execution of Tri-party agreement and fresh load sanction on 27.01.2016, new supply was released to cold storages on 25.08.2016. As per argument put forth by non-applicant and while going through MERC's tariff order it is seen that MR-10 facility is applicable to No-industrial Load. As the load of cold storages being Industrial one, it was not possible for non-applicant to grant MR-10 facility. Secondly demand based tariff is applicable to all connections having Industrial load. Therefore incorrect billing would have taken place, if MR-10 facility would have been given to the applicant. Also close scrutiny of HT bill reveals that only three consumption types are considered in billing program i.e. Industrial, Residential and Commercial. Non-existence of fourth category i.e Ag also puts constraint on non-applicant for providing facility of MR-10. In this case applicant needs multiple connections at HT/LT in the same premises for the purpose of segregation of Tariff, but LT could not be given, load being more than 65 HP, separate connection could not be given due to space constraint, LT and HT connection could not be given in the same premises, and for common purpose two meters i.e.

two connections could not be given, in that case Tri-party agreement is executed so that multiple number of connections can be released in the same premises. Therefore Corporate office of non-applicant rightly insisted for Triparty agreement to release separate connections for Cold storages of M/s Suruch Spices. No Licensee can afford loss of revenue. Hence from this analysis it is concluded that applicant's allegation that non-applicant had not given facility of MR-10 *Suomoto* has no force.

10. Similarly Close verification of energy bills of M/s Poshak Agrivets reveals that MR-10 facility is provided to record commercial consumption of that connection and as already discussed is not for recording the industrial consumption as in the instant case.

11. The contention of applicant that non-applicant has granted MR-10 facility to M/s. Melghat Cold Storage is also not correct, as it is seen as per argument put forth by non-applicant that this consumer indeed applied for such facility but later on refused the same. Therefore applicant's allegation that discriminatory treatment is given to their industrial consumers by non-applicant is proved to be baseless.

12. It is true that applicant has sought MR-10 facility as per his undertaking since 31.01.2011, but he himself has and accepted responsibility for the delay as per his letter dt 15.07.2016 which clearly states that due to fire on 08.5.2013, he could not execute the agreement although he agreed for the same as per his written communication and payment of Agreement fee such as of Rs.200/- on 25.01.2012 i.e. before almost five year. In the light of this admission the non-applicant cannot be held

responsible for the delay caused for execution of Tri-party Agreement and therefore releasing connection on dt.27.07.2016

17. For these reason, we hold that grievance application deserves to be dismissed.

Hence we proceed to pass following order, by majority.

ORDER

1. The Grievance application is dismissed.

Sd/-
(N.V.Bansod)
MEMBER

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

Sd/-
(Vishnu S. Bute)
Chairman.