

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.**

Case No. CGRF/AZ/AUC/690/2018/30

Registration No. 2018090011

Date of Admission : 11.09.2018

Date of Decision : 18.12.2018

M/s. Garware Polyester Limited, : COMPLAINANT
Aurangabad Pune Road, Waluj,
Aurangabad 431 133.
(Consumer No. 490019001706)

VERSUS

The Executive Engineer (Admn) : RESPONDENT
Nodal Officer, MSEDCL, Urban Circle,
Aurangabad.

&

Case No. CGRF/AZ/AUC/691/2018/31

Registration No. 2018090012

Date of Admission : 11.09.2018

Date of Decision : 18.12.2018

M/s. Garware Polyester Limited, : COMPLAINANT
L-6, Chikalthana,
Aurangabad.
(Consumer No. 490019000505)

VERSUS

The Executive Engineer (Admn) : RESPONDENT
Nodal Officer, MSEDCL, Urban Circle,
Aurangabad.

Complainant Representative : Shri A A Bugdani,
Respondent Representative : Shri B D Babar,
EE(Admn), Urban Circle,
Aurangabad

CORAM

Smt. Shobha B. Varma, Chairperson
Shri Laxman M. Kakade, Tech. Member/Secretary
Shri Vilaschandra S. Kabra Member.

CONSUMER GRIEVANCE REDRESSAL DECISION

- 1) (1) In case No. 690/2018, the Complainant M/s. Garware Polyester Limited, Aurangabad Pune Road, Waluj, Aurangabad is a consumer of Mahavitaran having Consumer No. 490019001706 &
(2) In case No. 691/2018, the Complainant M/s. Garware Polyester Limited, L-6, Chikalthana, Aurangabad is a consumer of Mahavitaran having Consumer No. 490019000505. The Complainants have filed a complaint against the respondent, the Executive Engineer i.e. Nodal Officer, MSEDCL, Urban Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 11.09.2018.

BRIEF HISTORY & FACTS RELATING TO THE GRIEVANCE:

- 2) In both these cases, parties & subject matter of dispute is identical, though the period of difference amount claimed is different. As such both these cases are clubbed with consent of both parties & tried together. Therefore, both these cases are disposed of by common judgment.

Case No. 690/2018

- 3) Complainant, M/s. Garware Polyester Ltd.; situated at Aurangabad-Pune Road, Waluj, Aurangabad, Consumer no.490019001706 had taken High Tension power supply from the Respondent since 1996.
- 4) Complainant's present Contract Demand & Sanctioned Load is 7750 kVA & 35,887 kW. That the complainant is receiving power supply on Express Feeder at a voltage level of 132 kV.
- 5) The Complainant is engaged in manufacture of Polyester Film / Polyester Chips/ Sun Control Film and uses PTA / Additives / Glycol & various chemicals as

raw material, which is then subjected to various processes. It is stated that for such manufacturing process, the complainant of Waluj & Chikalthana both units require continuous (without any variation in voltage or interruption of even few seconds) and good quality of power supply. The complainant has stated that, once the process of manufacturing of Polyester Film is initiated, voltage variation or interruption in power supply even for a few seconds' results in very adverse effect on the quality of final product and hence in such circumstances, the complainant has to abandon the process, which consequently results in huge financial loss.

Case No. 691/2018

6) Complainant, M/s. Garware Polyester Ltd situated at L-5, L-6, Chikalthana Industrial Area, Dr. Abasaheb Garware Marg, Aurangabad 431 210, Consumer no. 490019000505 had taken High Tension power supply from the Respondent.

7) Complainant's present Contract Demand & Sanctioned Load is 2050 kVA & 5952 kW respectively. That, the Complainant is receiving power supply on Express Feeder at a voltage level of 11 kV.

8) The Complainant is engaged in manufacture of Polyester Film and uses polyester chips & various chemicals as raw material, which is then subjected to various processes. It is stated that for such manufacturing process, the Complainant requires continuous (without any variation in voltage or interruption of even few seconds) and good quality of power supply. It is stated that, once the process of manufacturing of Polyester Film is initiated, voltage variation or interruption in power supply even for a few seconds' results in very adverse effect on the quality of final product and hence in such circumstances, the Complainant has to abandon the process, which consequently results in huge financial loss.

In both the cases following facts are commonly pleaded :-

9) Maharashtra Electricity Regulatory Commission by its June 2008 Tariff Order classified the High Tension Industrial consumers in to two sub-categories of tariff, HT Continuous and HT Non-Continuous. The tariff applicable to HT Continuous sub-category was comparatively on higher side than the sub-category HT Non-Continuous. Such sub-classification & differential tariff principle was based on the assumption or say logic that HT Continuous sub-category consumers would get supply on a continuous basis, and would not be subjected to load shedding (including staggering day) / interruption in power supply and therefore, the tariff for HT Continuous sub-category consumers was prescribed comparatively higher than that applicable for HT Non-Continuous sub-category. This logic was followed by the Hon'ble Commission in subsequent Tariff Orders, till November 2016, when these two sub-categories of tariff have been merged.

10) It is submitted that, during the period June 2008 to October 2016, the tariff applicable to HT Continuous sub-category & HT Non-Continuous sub-category Industrial consumers was as follows:

Sr. No.	PERIOD	TARIFF APPLICABLE TO		DIFFERENCE Paise/unit
		HT Continuous Sub Category Paise /unit	HT Non- Continuous Sub Category Paise /unit	
1	June 2008 to July 2009	430	395	35
2	August 2009 to August 2010	505	460	45
3	September 2010 to July 2012	527	480	47
4	August 2012 to May 2015	701	633	68
5	June 2015 to October 2016	721	671	50

11) It is submitted that, the Complainant being a Continuous process industry and being supplied power through HV Express Feeder was obviously categorized as consumer liable for higher tariff as applicable to HT Continuous sub-category. Accordingly, the Complainant had paid such higher tariff from June 2008 to August 2015, when as requested by the Complainant, tariff categorization of the Complainant was changed to HT Non-Continuous sub-category. However, in spite of these expenses incurred and payments made as per higher Tariff, the Complainant had faced interrupted power supply, resulting in huge losses. Since MSEDCL was charging higher Tariff of HT Continuous (Express Feeder) sub-category, it was the responsibility of MSEDCL to provide uninterrupted and load shedding free electricity supply as compared to consumers of Non-continuous sub-category. The Complainant stated that the levy of tariff applicable to HT Continuous sub-category even when there was Loading Shedding / outages / interruptions, is unjustified and illegal. Therefore, the Complainant is entitled for refund of the additional charges paid, with interest thereon, and for the billing periods involving load shedding, outages and interruptions.

12) It is submitted that, the Hon'ble Commission has determined the Tariff and the additional charge for uninterrupted supply of quality power, which was not supplied to the Complainant. Therefore the recovery of additional charge is not acceptable and thus it needs to be refunded to the Complainant.

13) It is submitted that, that the intent of specifying a premium Tariff for the consumers availing supply under Continuous category was under the assumption that MSEDCL shall supply such consumers on a continuous basis, i.e. without any interruptions of any form. Only exemptions granted to MSEDCL was as specified in the Regulation 17 of the SOP Regulations, 2005. In case of planned outages, it is

the duty of MSEDCL to give advance notice to the consumers as specified in Regulation 6.5 of the SOP Regulations, 2005.

14) The Complainant has submitted that M/s. Kalika Steel & Alloys Pvt. Ltd. and 16 Co-Petitioners had approached the Hon'ble Commission and had filed a Case No. 88 of 2012 seeking clarification in respect of levy of additional electricity charges for HT-1 Express Feeder (Continuous Supply) sub-category consumers in billing cycles when the Petitioners in the said Case had suffered Loading Shedding /outages/interruptions. The said Petition was disposed of by the Hon'ble Commission vide Order dated 16th July 2013, The Hon'ble Commission observed that:

"1. There is no specific provision in regard to the frequency of occurrences, either in the SOP Regulations or in the definition of applicability of Tariff, which will qualify as unacceptable for a continuous category of consumer.

2. Obviously, the intent and purport of the SOP Regulations and the design of the Tariff under the "continuous category" of supply was to provide the consumer with a "continuous supply" in the literal meaning of the expression.

3. Therefore, it cannot be ruled out that MSEDCL failed to provide the required quality of supply for which it has charged the Petitioners."

15) The Hon'ble Commission in the concluding paragraph of the said Order has further observed that:

"1. It can be fairly ruled that the supply provided by MSEDCL during the reported period of June 2008 to August 2011 had by no means conformed to the expected norm and quality of continuous supply.

2. *Therefore, the Commission is inclined to accept the Petitioners' prayer (i.e. M/s. Kalika Steel & Alloys Pvt. Ltd. and 16 Co-Petitioners) in regard to classification of the supply during this period as falling under non-continuous category.*
 3. *Accordingly, the prayer of the Petitioners in this respect is upheld.*
 4. *MSEDCL should have not charged tariff applicable to continuous industry on Express Feeder for consumers in the month in which they have not supplied continuous supply.*
 5. *The tariff during the said period in question which should have been applied is non-continuous tariff applicable to industrial category.*
 6. *Accordingly, the difference between the tariff charged and the tariff as applicable shall be refunded by the Respondent.*
 7. *The Complainant rely on the said **Order dated 16th July 2013** for its correct meaning & true interpretation."*
- 16) The Complainant has submitted that, MSEDCL had approached the Hon'ble Commission requesting for Review of the said Order dated 16th July 2013. Subsequently, the Hon'ble Commission by its **Order dated 17th July 2014 (Case No. 105 of 2013)**, was pleased to confirm the main Order, i.e. Order dated 16th July 2013 (Case No. 88 of 2012). Accordingly, MSEDCL has refunded the difference between the tariff charged (HT Continuous sub-category) and the tariff as applicable (HT Non-Continuous sub-category) to the said Industrial Consumers who had approached & filed a Petition before the Hon'ble Commission.
- 17) It is submitted that, a similarly placed consumer M/s. Century Rayon Ltd. had approached the Hon'ble Commission & had filed a **Case No. 86 of 2015** for refund of HT Continuous tariff charges, and regarding infringement by Maharashtra State Electricity Distribution Co. Ltd. of the Order dated 12.7.2014 in

Case No. 105 of 2013. M/s. Century Rayon Ltd. had sought directions from the Hon'ble Commission to MSEDCL to refund, with interest, the difference between the tariff MSEDCL had charged during that period and the lower tariff applicable for non-continuous supply, no such refund having been made irrespective of applications & follow up by M/s. Century Rayon Ltd.

18) After a prolonged litigation and considerable adjudication, the Hon'ble Commission by its Order dated 15th February 2017 was pleased to finally dispose of the Petition (**Case No. 86 of 2015**) filed by M/s. Century Rayon Ltd. and in the said Order the Hon'ble Commission has inter – alia clarified that:

“1. In the Kalika Order and the Review Order, the Commission had clarified the extent of applicability of the higher HT Continuous tariff during periods in which power was not supplied, the circumstances in which the difference between the Continuous and Non-Continuous tariff should be refunded and the principles to be followed in such cases.

2. These clarifications are of general application.”

19) As far as Kalika Steel and the other original Petitioners are concerned, the Commission also went into the details of the periods and nature of the disruptions in supply specific to those parties and directed refunds on that basis, thereby also providing a template for the manner in which such assessment might be made.

20) The Kalika Order was passed in exercise of the plenary powers of the Commission under Section 62(1) of the EA, 2003; where the Commission determines a tariff, it is also empowered to determine its applicability. The Petitioners had approached the Commission for such clarification on an issue arising from its Tariff Order, only subsequent to which consequential relief was also given to them.

- 21) The clarifications given through those Orders being of general applicability, it is expected that claimants seek dispensations on that basis from MSEDCL in the circumstances specific to their cases, and not from the Commission.
- 22) Grievances against the denial of such claims, made on the basis of the above Orders of the Commission, or with regard to the quantum of refund due, are in the nature of billing disputes between the consumer and the Distribution Licensee.
- 23) Consumers may agitate such grievances by recourse to the Redressal Mechanism specified by the Commission in the CGRF Regulations notified in pursuance of Sections 42(5) to (7) read with Sections 181(2)(r) and (s) of the EA, 2003, and not before the Commission.
- 24) It is submitted that both the Complainant's considering the above mentioned Orders passed by the Hon'ble Commission approached the Superintending Engineer, O & M Circle, Aurangabad and submitted application dated 16.08.2017 for relief / refund of tariff differential amount. It is submitted that, the said Application submitted by the Complainant was rejected by the Superintending Engineer MSEDCL, O & M Circle, Aurangabad vide letter dated 18.09.2017.
- 25) Both the Complainants therefore approached the Internal Grievances Redressal Cell, MSEDCL, Aurangabad and submitted an Application dated 16.12.2017, which was heard & disposed of by the Hon'ble IGRC, Aurangabad vide its Order dated 25.04.2018. The dismissal of application on the grounds that the Complainant has approached MSEDCL with his grievance nearly after 9 years and there is no clarity in tariff order about application of tariff if unplanned interruptions occurred to continuous category consumers.

26) It is submitted that, the Hon'ble IGRC has not examined / considered the application of the Complainant on merits and has simply dismissed it on the grounds of limitation.

27) It is submitted that, that the Order dated 15th February 2017 explicitly clarifies that the earlier Orders dated 16th July 2013 & 17th July 2014 are of general applicability and such being a clarification to the Tariff prevailing from time to time, MSEDCL should have pro-actively initiated the action of refund on its own without waiting for the aggrieved consumers to agitate the issue..

28) It is submitted that, that the information of interruption as stated in the annexed statement of Waluj Unit for the period 2009 to 2012 of Chikalthana Unit June 2008 to August 2015 is based on the record maintained by the Complainant , which can easily be cross checked with the data of interruption that would be available with MSEDCL.

29) That, the Hon'ble Commission vide its Order dated 12th July 2014 (Case No. 105 of 2013) referred in foregoing paragraphs has also clarified that MSEDCL is directed to verify that the relief allowed by the said Orders shall be applicable to such Respondents (in Case No. 105 of 2013) who have valid DIC Certificate as continuous process industry issued by the Directorate of Industries, Government of Maharashtra during those billing months under consideration of the said Petition. That, the Complainant is a continuous process industry and accordingly holds such certificate issued by the Directorate of Industries, Government of Maharashtra, which is valid for the period during which the Complainant has faced interruptions in power supply.

30) According to complainant CGRF, Nanded & Akola has pronounced decision in similarly placed facts of tariff difference amount, based on case No. 88/12 & 105/13, copies are attached.

31) It is submitted that, that the Hon'ble Commission in case of Kalika Steel by its Order dated 16th July 2013 has determined applicability of tariff and such applicability of tariff cannot be said as limited to the Petitioners in the said case only.

32) It is submitted that, MSEDCL should have pro-actively extended the applicability to all similarly placed consumers; however MSEDCL denied the benefit of the said Order to other consumers.

33) It is submitted that, that in case of M/s. Century Rayon, the Hon'ble Commission by its Order dated 15th February 2017 has clarified that the Order dated 16th July 2013 is a generic order. The dispute raised by MSEDCL about general applicability of the Order dated 16th July 2013 (Case No. 88 of 2012) has finally been settled by the Hon'ble Commission in February 2017 and has clarified that said Order is generic.

34) The complainant has submitted that, the time limitation starts from 16th February 2017, since till such time i.e. from 16th July 2013 to 15th February 2017, it was under dispute whether or not the said Order dated 16th July 2013 is applicable to all similarly placed consumers. In the circumstances & since the present dispute has been registered by the Complainant with Hon'ble IGRC, Aurangabad / MSEDCL on 16.12.2017/16.08.2017 respectively, when an application was submitted by the Complainant for refund of tariff differential amount, therefore the dispute raised by the Complainant is well within the time limitation.

35) It is submitted that the Hon'ble Forum has thus erred in assuming that the cause of action has arose on 16.08.2017 i.e. the date on which the Complainant based on the various Orders passed by the Hon'ble Commission first time approached MSEDCL with a grievance that the Complainant has erroneously been

billed as per HT Continuous tariff during the period in case of Waluj Unit May 2009 to Dec. 2012 & in case of Chikalthana Unit June 2008 to August 2015 even though the Complainant during this period has suffered interruptions in power supply.

36) The Complainant had approached the IGRC on 16.12.2017 and IGRC has given the decision on 25.04.2018. Thereafter the complaint is filed on 2.09.2018 and is within the limitations of 2 years from the date on which cause of action has arisen. On the subject of limitation the complainant has relied on following authorities :-

*"1. W.P. No. 9455/2011, **Hindustan Petroleum Vs MSEDCL** decided on 19th January 2012 by Hon'ble Bombay High Court (Nagpur Bench)*

*2. W.P. No. 3994/2016, **MSEDCL Vs Shilpa Steel & Power Ltd.**, decided on 18.07.2017 by Hon'ble Bombay High Court (Nagpur Bench)."*

37) It is submitted that, the Hon'ble Commission in the matter of Case No. 88 of 2012 (Kalika Steel & Others v/s MSEDCL) has clarified certain provisions of the tariff and applicability of tariff determined by the Hon'ble Commission in exercise of powers conferred up on it under Section 61 & 62 of the Electricity Act, 2003 and therefore such clarification has no time limitation for implementation.

38) In case No. 690/2018 it is prayed that,

1. The Complainant may be considered as re-categorized in to HT Non-Continuous Industrial Category for the period May 2009 to Dec.2012 (only during the months when the Complainant has suffered interruptions / load shedding / voltage fluctuation or dips) and billing during such period should be revised @ as applicable to HT Non-Continuous Industrial Category instead of HT Continuous Industrial Category;

2. The Complainant may be allowed refund towards the difference between the tariff as applicable to HT Continuous Industrial Consumers & HT Non-Continuous Industrial Consumers for the period May 2009 to Dec.2012 (only during the months when the Complainant has suffered interruptions / load shedding / voltage fluctuation or dips, a statement of which is attached to the Application);
- 39) In case No. 691/2018 it is prayed that,
1. The Applicant may please be considered as re-categorized in to HT Non-Continuous Industrial Category for the period Sept. 2008 to August 2015 (only during the months when the Applicant has suffered interruptions / load shedding / voltage fluctuation or dips) and billing during such period should be revised @ as applicable to HT Non-Continuous Industrial Category instead of HT Continuous Industrial Category;
 2. The Applicant may please be allowed refund towards the difference between the tariff as applicable to HT Continuous Industrial Consumers & HT Non-Continuous Industrial Consumers for the period Sept. 2008 to August 2015 (only during the months when the Applicant has suffered interruptions / load shedding / voltage fluctuation or dips, a statement of which is attached to the Application);
- 40) The Respondent has submitted say (Page No. 148) in case to 690/2018 & (Page No. 150) in case to 691/2018. The pleading of the Respondent in both the cases are common.
- 41) It is stated that specifically not admitted facts may be considered as their denial. The complainant of case No. 690/2018 Waluj Unit is consumer of respondent, who was supplied with electricity connection at HT on 132 KV

Voltage level, since from 15.08.1982 and at present it is having contract demand of 7750 KVA and connected load of 35887 KW, which is time to time enhanced or reduced. The complainant in case No. 691/18 Chikalhana Unit is consumer of Respondent & supplied with electricity connection of HT on 11 KV Voltage level, since from 26.09.1975 & at present is having contract demand of 2015 KVA & connected load 5952 KW, which is time to time enhanced or reduced.

42) As per, the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 the consumer is required to be supplied for Waluj Unit with 33 KV HT voltage level & for Chikalhana Unit 11KV HT Voltage level. But on request of the complainant it is supplied on 132 KV HT voltages to Waluj Unit level & 11 KV HT Voltage level to Chikalhana Unit on Express feeder for single consumer.

43) Further the complainant has explained the nature of work carried out in its unit/ industry the same are not admitted to respondent.

44) Orders passed by MERC are required to be considered in its true sense.

45) In denial of contents of para 5 & 6 of both the petitions, it is explained that, Complainant of Waluj & Chikalhana Units were never subjected to load shedding, also there were no any unplanned outages, some interruptions are occurred due to failure of equipment's which are beyond control of the respondent, hence there is no any question of any illegal activity done by respondent. Also there is no any question for refund of tariff difference and re-categorization of tariff on the count of load shedding which was never faced by the consumer.

46) It is submitted that, complainant of Waluj and Chikalhana both units were never subject to unplanned outages.

47) The contents of the paragraph no. 8 to 14 are in respect of the observation of Hon'ble Commission in orders of MERC case no 88/2012 passed on 16.07.2013, 105/2013 passed on 17.07.2014 and 86/ 2015 passed on 15.02.2017.

The same are not required to be explained as Hon'ble MERC in its further order in Case no. 122 of 2017 passed on 04.05.2018 Filed by MSEDCL V/s M/s Century Rayon Limited (CRL), has clarified the views regarding the applicability of the earlier orders passed in M/s Kalika and M/s CRL and the circumstances in which the HT Continuous consumers are eligible for the refund of the charges for interruption faced by them.

48) The contents of paragraph no 15 are admitted. The complainant has approached the office of Respondent after more than 9 years to claim the refund amount. The claim was rejected by office of respondent as it was time barred and as there was no any legitimate dues.

The contents of Paragraph no 16 regarding filing of application before the IGRC and order passed on 25.04.2018 the same is admitted by the respondent.

49) It is stated that the complainant has no any cause of action to approach before this Forum. The claim of the complainant is time barred as he has not approached before this Hon'ble Forum within the time limitation prescribed under the Regulation 6.6 of MERC (CGRF and EO) Regulations 2006. The complainant has filed his claim after lapse of limitation i.e. after passing of more than 9 years.

50) Further the interruptions submitted by the complainant were beyond the control of MSEDCL due to failure of equipments. Also order passed by Hon'ble Commission in Review Petition No 122/2017 filed by MSEDCL V/s M/s Century Rayon Limited (CRL) against the order of Hon'ble commission in Case no 86 of 2015 has clarified the eligibility of the consumers entitled for the refund and also

applicability of its earlier order passed in M/s Kalika steel by mentioning *Each and every case has to be examined on its own merit.*

51) The contents of the paragraph no 20 & 21 are denied & it is stated that, Complainant has to give cogent proof in respect of the statement of interruptions produced by them. If at all the interruptions are occurred then they are due to MSETCL or any climate change, cyclone or natural climate, lightning, accident or break down or fault of plant and machinery or causes beyond the control of the supplier etc as the said aspect has been duly agreed by both the consumers time to time while enhancing the load vide agreement entered on dated: 22.Mar 1983 at Sr. No 17 (a), (b) and Clause (c). It is also stated that Chikalhana Unit has claimed interruption from June 2008 to August 2015, but submitted statement of September 2008 to August 2015.

52) That interruptions are occurred due to the reasons which were beyond the control of MSEDCL. During the entire period under question. The respondent has not applied for change of tariff category nor any such application has been brought on record before this Forum till date.

Also the claim of the consumer is not filed within limitation; He is not having any legitimate dues pending with respondent. The claimant was required to file his claim within Two years by annexing the relevant year DIC certificates in respect of the continuous process industries which he has failed to file within limitation.

53) In denial of the contents of the paragraph no 22, 23, 24, 25 & 26, it is stated that, the complainant is trying to justify his case with the orders passed by other Forums, but every case has its own stands/facts and merits. Also the deposits if any are made in any particular case, then they are made by reserving rights of MSEDCL/ subject to its right.

54) Both the complainants have not come with clean hands.

55) Further, the base of the litigants in MERC case no 88 of 2012 M/s Kalika Steel, was of interruptions occurred due to the Load shedding. Present case of the complainant is having different facts in which interruptions are not caused due to load shedding. Most of the trippings are occurred due to MSETCL or any climate change, cyclone or natural climate, lightning, accident or break down or fault of plant and machinery or causes beyond the control of the MSEDCL or for unavoidable mechanical circumstance etc.

In denial of the contents of paragraph no 30 & 31, it is stated that MSEDCL has filed Review petition no 122/2017 against the order passed in MERC Case no 86 of 2015 of M/s Century Rayon Limited (CRL) and Hon'ble Commission has clarified the applicability of the order in para no 15.

Also during the entire period under question of Waluj Unit (May- 2009 to Dec-2012) & Chikalthana Unit (June - 2008 to Aug -2015) the respondent has not applied for change of tariff category, nor any such application has been brought on record. Hence the consumer cannot take the stand about passing of the order of Hon'ble commission. IGRC has rightly rejected the claim of the Complainant.

56) That both the complaints are not within limitation. That Judgment cited by complainant of W.P. No. 9455 /2011 is overruled by Judgment in W. P. No. 6859/2017, MSEDCL Vs Jawahar Shetkari Soot Girni Ltd., dtd. 21.08.2018.

57) Further the consumer has no any legitimate claims pending with MSEDCL during the entire period under question (May- 2009 to Dec-2012) the respondent has not applied for change of tariff category nor any such application has been brought on record before this Hon'ble forum till date. Also he has not claimed any compensation within the limitation.

58) Further both the complainants are not vigilant with its own right.

59) The complaint ought to be dismissed on the ground of delay and laches on the part of complainant. It has filed this complaint on 07.09.2018 for the period from May-2009 to Dec -2012 regarding Waluj Unit & June 2008 to August 2015, as regards Chikalthana Unit. Complainant has not explained the delay of almost of 9 years in filing the complaint.

60) Hence the complaint needs to be dismissed in view of the delay on the part of present complainant. Also the complainant is not having any cause of action and legitimate claims. Hence, it is prayed that both complaints may be dismissed.

The complainant has filed rejoinder (Page No. 230 in 690/2018 & Page No. 232 in 691/2018)

61) It is stated that, Admissions of Respondent about interruptions (Para 3) may be considered. In the rejoinder the complainant has repeated the ratio of Kaika Steel & other cases.

62) It is submitted that the Hon'ble Commission has violated principles of natural justice because, notice to affected parties were not given & due process of law was not followed before passing order date 04.05.2018 (In case No. 122/2017) It is the duty of Respondent to implement order passed by MERC. It is prayed

A) To quash the order passed by IGRC in case No. SE/AUC/IGRC/C8/Tech/5039.

B) The prayer in original application about re-categorization is claimed from June 2008 to August 2015.

The Respondent has submitted reply to rejoinder (Page No. 241 in 690/2018 & Page No. 244 in 691/2018) defense contentions are repeated.

63) It is stated that, the base of the litigants in MERC case No. 88 of 2012 M/s. Kalika Steel, was of interruptions occurred due to the load shedding. Present case

of the complainant is having different facts in which interruptions are not caused due to load shedding, also is not the claim of complainant that he has faced interruptions due to the load shedding. Most of the tripping are occurred due to MSETCL or any climate change, cyclone or natural climate, lighting, accident or break down or fault of plant and machinery or causes beyond the control of the MSEDCL or for unavoidable mechanical circumstances to which respondent is not responsible.

64) We have perused pleadings, & all documents submitted by both parties. We have heard arguments advanced by the Complainant Representative Shri S. V. Bapat & Respondent Representative, Shri Bhujang Babar, Executive Engineer (Admin), Urban Circle, Aurangabad. Following points arise for our determination, & we have recorded its findings thereon for the reasons to follow:-

Sr. No.	POINTS	FINDINGS
	In Case No. 690/2018	
1)	Whether the complainant is entitle for re-categorization to HT Non – continuous industry instead of continuous industrial category for the period May 2009 to December 2012 (only during the months when the complainant has suffered interruptions/load shedding / Voltage fluctuations or dips) & for revision of the bill ?	No
2)	If yes, Whether the complainant is entitle for refund of tariff difference amount of aforesaid period & aforesaid category?	No
3)	Whether the claim is within limitation?	Yes
4)	Whether order passed by IGRC is legal & correct?	Partly yes
5)	What order & cost ?	As per final order

	In Case No. 691/2018	
1)	Whether the complainant is entitle for re-categorization to HT Non – continuous industry instead of continuous industrial category for the period September 2008 to August 2015 (only during the months when the complainant has suffered interruptions / load shedding / Voltage fluctuations or dips) & for revision of the bill ?	No
2)	If yes, Whether the complainant is entitle for refund of tariff difference amount of aforesaid period & aforesaid category?	No
3)	Whether the claim is within limitation?	Yes
4)	Whether order passed by IGRC is legal & correct?	Partly yes
5)	What order & cost ?	As per final order

REASONS

65) **Point Nos. 1 & 2 of case No. 690/2018 & 690/2018** :- Parties are not at dispute that complainants Waluj Unit Consumer No. 490019001706 present contract demand is 7750 KVA & 35887 KW. Receiving power supply on express feeder at a voltage level of 132 KV. Bill (Page No. 20) Shows present category “Tariff – 103 HT – 1 A.”

66) In respect of Chikalhana Unit, Consumer No. 490019000505 present contract demand & sanctioned load – 2050 KVA & 5952 KW. Receiving power supply on express feeder at a voltage level of 11 KV up to from June 2008 to August 2015 paid tariff continuous from September 2015 - category changed –

non – continuous on request of complainant. Bill (Page No. 20) goes to show present category “101-HT-A.”

67) The complainants, Waluj & Chikalthana both units in support of their claim have relied upon the various tariff orders issued by Hon’ble MERC.

68) First is case No. 88/2012, M/s. Kalika Steel & Alloys Pvt. Ltd., & 16 Co-Petitioners V/s MSEDCL decided on 16th July 2013. (Copy is produced at Page No. 22 in case No. 690/2018 & Page No. 71 in case No. 691/18). The petitioners had sought clarification in respect of levy of additional electricity charges for HT-1, express feeder (Continuous supply) category consumers in billing cycles. When there were instances of failure in the electricity supplied by MSEDCL.

Hon’ble Commissions observation at para 31 & 36 are reproduced :

“31. The Commission observed that there is no specific provision in regard to the frequency of occurrences, either in the SOP Regulations or in the definition of applicability of Tariff, which will qualify as unacceptable for a continuous category of consumer. Obviously, the intent and purport of the SOP Regulations and the design of the Tariff under the “continuous category” of supply was to provide the consumer with a “continuous supply” in the literal meaning of the expression. Therefore, it cannot be ruled out that MSEDCL failed to provide the required quality of supply for which it has charged the Petitioners.”

“36. With the above analysis and observations, it can be fairly ruled that the supply provided by MSEDCL during the reported period of June 2008 to August 2011 had by no means conformed to the expected norm and quality of continuous supply. Therefore, the Commission is inclined to accept the Petitioners’ prayer in regard to classification of

the supply during this period as falling under non-continuous category. Accordingly, the prayer of the Petitioners in this respect is upheld. MSEDCL should have not charged tariff applicable to continuous industry on Express Feeder for consumers in the month in which they have not supplied continuous supply. The tariff during the said period in question which should have been applied is non continuous tariff applicable to industrial category. Accordingly, the difference between the tariff charged and the tariff as applicable shall be refunded by the Respondent to the Petitioners with interest at the present bank interest rate. Compliance of this Order shall be reported within 90 days of the date of this Order.

With the above, the Petition filed by the Petitioners in Case No. 88 of 2012 is disposed of.”

69) Review application No. 105/2013 was filed by MSEDCL for review of aforesaid order, seeking clarification in respect of levy of additional electricity charges for HT-1 Express feeder (continuous supply) category consumers in billing cycles wherein there had been load shedding in electricity supplied by MSEDCL. (Copy is produced at Page No. 39 in case No. 690/2018 & Page No. 38 in case No. 691/2018).

The observation made by Hon'ble commission in para 12.2 is as follows :

“12.2. Taking into consideration the Commission's Order in Case No. 88 of 2012, the Commission is of the view that regardless of undertaking or agreement on supply on sub-SoP level, MSEDCL was bound to supply continuous power as envisaged for continuous process industry. MSEDCL is directed to verify that the Respondents (in Case No. 105 of 2013) had DIC Certificate as continuous process industry issued by the

Directorate of Industries, Government of Maharashtra during those billing months under consideration of this Petition and refund these Respondents. The Respondents who did not have a valid certification as continuous process Industry issued by the Directorate of Industries, Government of Maharashtra for that period will not be entitled for any relief.”

“The Commission had clarified in para 12.3 *“That refund to be given in full without interest , it was on the ground of delay.”*

70) Third case cited by the complainant’s is Case No. 86/2015, M/s. Century Rayon Ltd. V/s MSEDCL decided on 15th February 2017, by Hon’ble Commission. (Copy is produced at Page No. 48 in case No. 690/2018 & Page No. 47 in case No. 691/2018).

The said petition was filed for refund of HT continuous tariff charges & infringement by MSEDCL of order dtd. 12.07.2014 in case No. 105/2013.

In para 15 of the order, the Hon’ble Commission made it clear about general applicability of M/s. Kalika Steel order. The relevant portion of para 15 is reproduced :-

“15 In this manner, in the Kalika Order and the Review Order, the Commission had clarified the extent of applicability of the higher HT Continuous tariff during periods in which power was not supplied, the circumstances in which the difference between the Continuous and Non-Continuous tariff should be refunded and the principles to be followed in such cases. These clarifications are of general application. The Kalika Order was passed in exercise of the plenary powers of the Commission under Section 62(1) of the EA, 2003: where the

Commission determines a tariff, it is also empowered to determine its applicability.

16 *The clarifications given through those Orders being of general applicability, it is expected that claimants seek dispensations on that basis from MSEDCL in the circumstances specific to their cases, and not from the Commission.”*

71) True that considering the ratio of Century Reyon’s case, it is clear that the tariff order difference laid down in case No. 88/2012 is generally applicable to all similarly placed consumers.

72) Respondent has relied upon the ratio laid down in representation No. 56/2017, M/s. Jai Corpn Ltd. V/s MSEDCL, decided on 17.05.2018 by electricity ombudsman, Nagpur (Copy is produced at Page No. 184 in case No. 690/2018 & Page No. 186 in case No. 691/2018). . In that case the appellant had demanded a refund of difference of tariff between continuous & Non continuous categories for the period August 2014 to October 2016. While interpreting case M/s. Kalika Steel (Case No. 105/2013), it is observed as in para 6 & 7 as follows :-

“6. *This case of M/s. Kalika Steel however, deals with load shedding in the case of consumers with a requirement of uninterrupted power supply and with continuous tariff. In the case under consideration of M/s. Jai Corp, the appellant have not provided any evidence of load shedding due to which, they had to suffer interruptions in the power supply.*

7. *It is however an admitted fact that due to trippings, continuous power supply could not be made available. In that case, the appellant was at liberty to seek compensation under the Standard of Performance Regulations, 2014, Regulation 6.*

It was open to the appellant to approach the Internal Grievance Redressal Cell of the MSEDCL and to ask for compensation for the power outages / trippings. He has however not done so."

The present both cases complainants also do not claim reason of load shedding for interruption, but interruptions are on account tripping with some other reason. Bearing in mind the aforesaid ratio, the complainant's case is not be fitted to claim tariff difference.

73) However, in order to determine entitlement of particular consumer for tariff difference from continuous to non continuous ratio laid down in case No. 122/2017 cited by the MSEDCL (Copy is at Page No. 169 in case No. 690/2018 & at page No. 171 in case No. 191/2018) i.e. Review petition filed by MSEDCL V/s M/s Century Rayon Ltd., decided on 4th May 2018 is important. It was Review Petition for review of the Commission's order dtd. 15.02.2017 in case No. 86/2015.

The guide lines given by Hon'ble Commission in para 15 & 16 are reproduced as under :-

"15. At para.15 of the impugned Order, the Commission has clarified that its earlier Order dated 16 July, 2013 was a clarification to the Tariff Order and was hence applicable to other similarly placed consumers. However, such relief needs to be granted only after detailed scrutiny of the interruptions faced by continuous category consumers. To that extent, it is incorrect to say that para. 15 is of general applicability. Each and every case has to be examined on its own merit. It therefore follows that relief cannot be automatically passed on simply because there were insignificant random interruptions, perhaps on account of transient faults or otherwise.

16. *In this regard, the Commission observes that the formula for Load Factor Incentive specified in the Tariff Order factored in 60 hours of interruption/no supply in a month. Load Factor Incentive was applicable to continuous category consumers also. Thus, in the Tariff Order, 60 hours/month interruptions/no supply was considered as permissible for continuous category consumers. Further, such continuous category consumer was entitled to seek compensation as per the provisions of the SoP Regulations for delay in restoration of supply. Hence, before granting relief of change of tariff category from continuous to non-continuous on account of interruptions in supply, it is important to verify that such consumer suffered more than 60 hours of interruptions/no-supply in a month. Further, as mentioned in the Order dated 16 July, 2013, continuous category consumers were not supposed to undergo any planned Load Shedding. Hence, if a continuous category consumer was subjected to planned Load Shedding, such consumer should pay the non-continuous tariff for that month and not the continuous category tariff. All these details need to be verified before granting the benefit of non-continuous tariff to continuous category consumers. MSEDCL should verify these details before granting any relief in future.”*

74) Bearing in mind these guidelines, let us refer the interruption table produced by the complaint in case No. 690/2018. The Respondent has not submitted such information. The table is at Page No. 89 & also copies of letters together with fluctuation record are produced.

In Case No. 690/2018 (Waluj-Unit) MSEDCL Power failure / interruption data from June 2008 to August 2015. (The column of hrs and minutes is calculated by us & inserted additionally).

Sr. No.	Month	Date	MSEB Failure Time	Reason	Hrs / Minutes
1	May. 09	14.05.09	17.00 to 18.10	Problem at Chitegaon and Padegaon Sub Stn	01.10
2	Feb. 09	06.02.10	10.10 to 11.20	Waluj 400 KV S/S fault	01.10
3	June 10	11.06.10	15.30 to 16.00	Tripping from 400 KV S/S	00.30
4	Sept. 10	23.09.10	01.50 to 04.10	Bus PT failure at Garware MSETCL yard	02.20
5	Dec. 12	08.12.12	19.27 to 02.30	CT failure at Garware MSETCL yard	07.03

75) The aforesaid table goes to show that total hrs. of interruption in the months were not more than 60 hrs. As such relying on the observation in case No. 122/2017 in respect of Waluj Unit, the interruption caused can't be considered for re -categorization to Non-continuous industry instead of continuous.

76) Now, referring to interruption data Annexure 'C' Page No. 89 in case No. 691/2018 of Chikalthana Unit (Page No. 89 to 91) Consumer No. 490019000505, together with letters & fluctuation record, the column of hrs / minutes is added by us is given as follows. :-

MSEDCL Power failure / interruption data from June 2008 to August 2015

Sr. No.	Month	Date	MSEB Failure Time	Reason	Hrs / Minutes
1	Sept. 08	09.06.2008	12.30 to 01.00	Radiant agro exp. Feeder tripped	00.30
		9.13.2008	15.25 to 15.55	132 KV Harsool SStn breaker tripped	00.30
2	Oct. 08	10.24.2008	13.05 to 13.10	Garware feeder tripped on earth fault	00.05
3	Apr. 09	04.07.2009	03.50 to 04.30	Harsool feeder CT failed at Padegaon SStn	00.40
4	May 09	05.18.2009	11.55 to 13.25	Greaves feeder maintenance work	01.30
		05.23.2009	15.50 to 21.50	Gaware Feeder 33 KV CT failed	6.00
5	June 09	06.20.2009	13.30 to 13.31	Harsool SStn 33 KV CT failed	00.01
6	Sept. 09	09.15.2009	15.15 to 15.45	GPL feeder tripped	00.30
7	Jan. 10	01.04.2010	11.30 to 11.45	GPL feeder tripped on earth fault	00.15
8	Feb. 10	02.06.2010	10.30 to 11.25	400 KV Line tripped at Waluj SStn	00.55
		02.11.2010	21.35 to 22.25	Chikalhana 132 KV SStn TR2 tripped	00.50
9	Mar. 10	03.22.2010	16.10 to 16.30	GPL feeder tripped	00.20
10	Apr. 10	04.25.2010	08.30 to 09.15	GPL feeder tripped on earth fault	00.45
11	June 10	06.11.2010	15.35 to 15.50	Padegaon SStn 220 KV Circuit tripped	00.15
		06.13.2010	18.30 to 18.45	132 KV Chikalhana SStn 33 KV both TR tripped	00.15
12	Aug. 10	08.15.2010	16.10 to 16.35	Radiant agro overhead line maintenance work	00.25
		08.15.2010	18.15 to 19.00	GPL feeder tripped on earth fault	00.45

13	Jan. 11	01.04.2011	19.30 to 19.45	New transformer installed on GPL line tripping for trade fare function	00.15
		01.27.2011	15.35 to 15.45	132/33 KV transformer tripped at Chikalthana SStn	00.10
14	Mar. 11	03.10.2011	11.40 to 11.55	GPL feeder tripped on earth fault	00.15
15	Apr. 11	04.03.2011	16.00 to 16.15	Chikalthana SStn yard bird fault on transformer PT Garware feeder tripped	00.15
		04.28.2011	15.55 to 16.45	At Chikalthana SStn feeder tripped during relay work	00.50
16	Aug. 11	08.06.2011	07.45 to 07.55	132 KV transformer breaker tripped at chikalthana SStn	00.10
17	Sept. 11	09.08.2011	09.55 to 10.05	25 MVA transformer tripped due to problem in empire mall feeder	00.10
18	Oct. 11	10.14.2011	15.55 to 16.15	Incoming breaker tripped at 220 KV Padegaon SStn	00.20
19	Mar. 12	03.17.2012	08.35 to 15.00	Garware feeder CT failed as per Chikalthana SStn	06.25
		03.26.2012	09.20 to 11.25	132 KV transformer busing work as per Chikalthana SStn	02.05
20	Apr. 12	04.13.2012	07.00 to 07.45	GPL feeder tripped on earth fault.	00.45
21	Jul. 12	07.08.2012	11.25 to 17.30	HT cable burst 33 KV bus to transformer at Chikalthana SStn	06.05
		07.30.2012	11.42 to 11.55	Chikalthana SStn incoming feeder tripped at Padegaon SStn	00.13

22	Oct. 12	10.07.2012	08.25 to 08.35	GPL feeder tripped on earth fault.	00.10
23	Jan. 13	01.04.2013	09.20 to 18.45	Control panel changing work at MSEB	09.25
		01.11.2013	06.35 to 17.45	Earth fault relay problem at GTL SStn	11.10
		01.25.2013	14.50 to 21.00	Transformer incoming 33 KV bus side cable joint burst.	06.10
24	Mar. 13	03.17.2013	17.15 to 17.35	GPL feeder tripped on earth fault.	00.20
25	Dec. 13	12.01.2013	04.15 to 04.55	Garware feeder tripped due to flash over at N-7 SStn	00.40
26	June 14	06.09.2014	20.17 to 21.25	Power failed due to earth	01.08
		06.09.2014	20.35 to 21.25	Power failed due to earth	00.50
27	Aug. 14	08.05.2014	13.30 to 14.15	Garware feeder insulator failed	00.45
		08.27.2014	07.35 to 08.15	Power failed due to tripping of Empire mall feeder tripped	00.40
28	Sept. 14	09.17.2014	18.10 to 21.00	Garware 11 KV line conductor broken by bird fault.	02.50
		09.22.2014	05.50 to 06.30	Indo German feeder tripped on earth fault	00.40
29	Mar. 15	03.05..2015	18.17 to 18.30	CT burst at Padgaon SStn	00.13
		03.07.2015	09.00 to 09.20	Fault on Indo German feeder	00.20
30	May 15	05.29.2015	09.15 to 13.00	Outage for preventive maintenance	03.45
31	June 15	06.12.2015	21.05 to 21.30	Problem at Indo German feeder	00.25

32	July 15	07.16..2015	19.35 to 20.20	Wockhardt feeder cable problem	00.45
		07.17.2015	17.35 to 19.45	Wockhardt feeder cable problem	01.10
		07.18.2015	17.50 to 18.40	Wockhardt feeder cable problem	00.50
33	Aug. 15	08.19.2015	16.40 to 17.25	At Chikalthana SStn breaker tripped	00.45

77) The aforesaid table goes to shows that total hrs. of interruptions in any of the month of Waluj & Chikalthana Units were not more than 60 (sixty) hrs. As such relying on the observations in case No. 122/2017, in respect of Chikalthana Units Consumer No. 490019000505, the interruption caused can't be considered for re-categorization to non-continuous industry instead of continuous of the period claimed. As such the complainants Waluj & Chikalthana Units (both cases) are disentitle for any refund of tariff difference as claimed.

78) The complainants have also relied upon the orders passed by CGRF, Nanded in case No. 1/2015 Jai Corp. Sipt coated still Division V/s MSEDCL (Copy is at Page No. 90 to 95) & its compliance order in case No. 89/2016 before MERC (Page No. 104) & of CGRF, Akola Case No. 12/2016, decided on 04.08.2016. JJ Fires Span Pvt Ltd. Vs MSEDCL, ratio of those cases are neither binding on this Forum, nor the latest Review Petition was considered, so they are not helpful to complainants.

79) Considering the above discussion, we answer point Nos. 1 & 2 (In case No. 690/2018 & 691/2018 in the negative.

80) **Point Nos. 3 of case No. 690/2018 & 691/2018** :- Regarding limitation, the complainants representative Shri Bapat has submitted that cause of action arose on 16th February 2017, i.e. the date 15.12.2017 of passing order in review case No. 86/2015. Then on 16.12.2017 grievance was submitted before IGRC,

Aurangabad & it was decided on 25.04.2018. Therefore, the present appeals are filed on 11.09.2018, hence both appeals are within limitation. On the other hand Respondent Representative Shri Babar has submitted that there is delay of nine years & as per R. 6.6 of CGRF & Ombudsman Rules 2006, the appeals are time barred. R. 6.6 of MERC Regulations, 2006 (CGRF & Ombudsman)

“6. Procedure for Grievance Redressal

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

81) In this respect complainant has relied upon following cases.

1. WP No. 9455/2011, M/s. Hindustan Petroleum Corpn Vs MSEDCL, decided by Hon’ble Bombay High Court on 19.01.2012, the dispute was that the activity of LPG Gas bottling plant is manufacturing activity to charge under HT-1 –Industrial order dtd. 31.05.2008 in case No. 72/2007, applicable from 01.06.2008 till 31.03.2009 was relevant. The petitioner approached before IGRC on 14.10.2010 & it was rejected on 27.10.2010. So 27.10.2010 was held as the date of cause of action.
2. WP No. 3997/2016, MSEDCL Vs M/s. Shilpa Steel & Power Ltd., decided on 18th July 2017 by Hon’ble Bombay High Court, Nagpur Bench Tariff difference industry is claimed instead of commercial on the basis of tariff order dtd. 12.09.2010. The Respondent No. 1 filed a complaint before IGRC on 24.04.2015, claiming difference from January 2010 to March 2015. The complaint was rejected by IGRC on 29.04.2015 on the ground of limitation (6.6 Regulations, 2006) Dispute then was raised before CGRF & it was dismissed. The order of CGRF was set aside.

At para 8, it is observed that from the date of rejection of complaint by IGRC i.e. 24.04.2015, the grievance was filed within a month i.e. 08.05.2015, hence within limitation.

3. Appeal No. 197/2009, MSEDCL V/s MERC & Others decided on 11.03.2011, by Hon'ble Appellate Tribunal for Electricity, following observations are made at para 10 & 11.

"10. It cannot be debated that the 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 Limitations Act. Admittedly, there is no provision in this Act, prescribing the bar relating to limitation, That apart, this question has already been decided by the Hon'ble Supreme Court that the Limitation Act would not apply to the quasi-judicial authorities like State Commission. This has been laid down in AIR 1976 SCC 177, AIR 1985 SCC 1279, AIR 2000 SCC 2023, 2004 (VOL 2) SCC, 456 and 1985(VOL 2) SCC 590. Further, it has been held by the Hon'ble Supreme Court in Madras Port Trust V/S 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 the citizens.

11. *The matter in issue is not of adjudication of disputes between two parties to which limitation may have any application. There is no question of limitation in the matters of tariff determination and regulation of the revenue requirements of the licensee. As mentioned above, there is no such limitation*

prescribed under the Electricity Act, 2003. Tariff fixation is a continuous process and is to be adjusted from time to time. Consequently, the application and enforcement of tariff also constitute a part of the Regulatory exercise to which the limitation cannot be applied. Hence, the contention that the proceedings initiated by the R2 Consumer were barred by Limitation would fail. ”

4. The ratio laid down in the case AIR 1979 SC 1144, Madras Port Trust V/s Hymansu International ratio is already referred above.
5. The 5th case is case No. 182, 188 & 190/2017, 1 to 26, 30 to 44, 54 to 58 of 2018, M/s. Vidhata Metals Pvt. Ltd. V/s MSEDCL, decided by Hon’ble MERC on 12.10.2018 is based on different facts & not applicable to present case.
6. Next case is Representation No. 185/2016 Bholaram Metal Industries Pvt. Ltd., V/s MSEDCL decided by Hon’ble Ombudsman, Mumbai dtd. 28.09.2018. It was claim of refund of excess FAC based on approval of Commission given on 3rd June 2016. Following observations are made at Para 9. Application was made on 09.10.2017 & grievance was raised before IGRC on 08.02.2018 was held within limitation.

“9. The Forum has rejected the grievance on the ground of limitation. It is however, relevant to note that the cause of action can be said to arise in this case, after the post facto approval of the Commission.
11. *The Bombay High Court has held that regulations which are framed under the Electricity Act, 2003 are required to be interpreted in a manner which are beneficial to the consumers*

[2017 DGLS (Bom) 2012]. The view taken by the Forum, is hence liable to be set aside.”

82) As against this the Respondent has placed reliance on ratio laid down in a case WP No. 6859/2017, MSEDCL V/s Jawahar Shetkari Sut Girni Ltd. & 6860/2017, 6861/2017, 6862/2017 decided by Hon’ble Bombay High Court, Aurangabad Bench on 21.08.2018.

In those cases the consumer was assailing FAC bills paid by the consumers.

Thereafter raised disputed on 08.08.2016. On the point of limitation Hon’ble High Court in para 42 & 45 has observed that,

42. *“I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 co-exist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.”*

45. *“As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.”*

83) It is important to note that, in the aforesaid case, FAC bills were in dispute where as in the present case the relief is claimed on the basis of tariff order, more particularly, when its general application is declared by the Hon'ble Commission in the case of M/s. Century Rayan Case No. 86/2015 decided on 15th February 2017 (Cited Supra.) & it was further observed that, "the clarifications given through those orders being of a general applicability, it is expected that claimant's seek dispensation on that basis from MSEDCL in the circumstances specific to their cases & not from the Commission. Grievances against the denial of such claims, made on the basis of above orders of the commission or with regard to the quantum of refund due are in the nature of billing disputes between the consumer & the distribution licensee. So consumer may agitate such grievance by recourse to the redressal mechanism specified by the commission in the CGRF Regulations notified in pursuance of Sec. 42(5) to (7) R/W 181 (2)(r)& (S) of EA 2003 & not before the Commission."

84) Therefore the facts of the present case is on different footing then the case of WP 6859/2017 & others & not applicable to present state of affairs.

85) In appeal No. 197/2009 (Cited supra) same facts were under consideration based on tariff order, the dispute was raised. So, considering the ratio laid down in Appeal No. 197/2009, in the present case the cause of action firstly arose on 15.12.2017, when general application of M/s. Kalika Steel case (cited supra) was declared by Hon'ble Commission. Dispute was then raised before IGRC on 16.12.2017 & it was decided on 16.04.2018 & communicated on 25.04.2018. Considering the ratio of C. A. 197/2009, & case of Bholaram, firstly cause of action arose on 15.12.2017, i.e. the date of order passed in case No. 86/2015 (MSEDCL Vs Century Reyon). From such date the dispute is filed within two years i.e. on 11.09.2018 before this Forum. Hence as per R. 6.6 of MERC Regulations (CGRF &

Ombudsman) Rules, the claim is within limitation. We answer the point No. 3 in the affirmative.

86) **Point Nos. 4** :- Though the order of dismissal passed by IGRC is found upheld, however, the conclusion drawn by IGRC are held not legal & correct. We answer the point No. 4 accordingly.

87) Considering the aforesaid discussion, we hold that complainants Waluj & Chikalthana Unit both are not entitle for reliefs claimed. Hence we proceed to pass following order in reply to point No. 5 :-

ORDER

- 1) Complaint case No. 690/2018 and 691/2018 are hereby dismissed.
- 2) Parties to bear their own costs.
- 3) True copy of the order be kept in case No. 691.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Laxman M. Kakade
Member / Secretary

Sd/
Vilaschandra S.Kabra
Member