

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

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**Case No. CGRF(NZ)/21/2018**

Applicant : M/s. Laxmi Govind Paper &  
Pulp Mills Pvt. Ltd. ,  
Wadoda (Zullar Road), Bhandara Road,  
Nagpur, C/o. Ameya Tower, Dhantoli,  
Nagpur-12.

Non-applicant : Nodal Officer,  
The Superintending Engineer,  
N. R. C., M.S.E.D.C.L.,  
Nagpur.

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Applicant represented by : 1) Shri Deepak Saoji,  
2) Shri Ravi Kumar

Non-applicant represented by: 1) Shri R.K. Giri, Exe.Engr.  
2) Shri R.G. Hadke, Dy.E.E.

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Quorum Present : 1) Shri Arvind Jayram Rohee,  
Chairperson.  
2) Mrs. V.N.Parihar,  
Member Secretary  
3) Mrs. Asmita Avinash Prabhune,  
Member(CPO)

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**ORDER PASSED ON 31.05.2019**

1) The applicant filed present grievance application before this Forum on 07.03.2019 under Regulation Commission (Consumer Grievances Redressal Forum & Electricity Ombudsman) Regulations 2006 (hereinafter referred to as Regulations).

2) Non applicant denied applicants case by filing reply dt. 08.04.2019.

3) Applicant's grievance in brief is that he is a consumer of MSEDCL connected at 33 KV. The applicant has a contract demand of 500 KVA. Applicant applied for supply at 33 KV. Vide application dt. 9.2.2004 to SE. NRC, MSEDCL for non continuous industry with a contract demand of 500 KVA. The applicants demand was sanctioned vide MSEDCL load sanction letter dt. 17.8.2004. In the load sanction letter at clause No. 13 with respect to power restriction it is stated that "*Government load restriction orders as prescribed and amended from time to time shall be applicable to you. You will have to observe the staggering holiday as decided by the Govt. which is at present Wednesday for Nagpur district*". Applicants supply was released on 06.10.2004. Commission issued tariff order dt. 18.05.2007 in case No. 65 of 2006 applicable from May 2007. In this tariff order non express feeder tariff was at higher rate i.e. Rs.3.40 / KWH compared to express feeder tariff which was Rs.3.10 /KWH. Commission issued another tariff order on 20.6.2008 applicable from the month of June 2008 vide case No. 72 of 2007 and revised the applicable tariff for industries. In this tariff order Commission specified tariff for express feeder consumers as Rs.4.30 / KWH and for non express feeder as Rs.3.95 / KWH. Commission in case No. 72 of 2007 applicable from June 2008 and thereafter revised tariff applicable from month of Sep. 2010 and

revised tariff is applicable from August 2012, following condition was specified.

4) In the tariff order of the Commission applicable from June 2008, further in tariff order dt. 12.9.2010, applicable from Sept. 2010, and in tariff order dt. 16.8.2012 it is mentioned that *“Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry”*. The MSEDCL filed application for clarification of the tariff order applicable from 1.6.08 and requested to Commission as under.

“A) the clause “demanding continuous supply” may please be removed from the definition of HT-I (Continuous Industry).

B) Existing Consumers categorized under HT-I Continuous as on April 1 2008 should be continued under same category.

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

The Commission Ruled in case No. 44 of 2008 that there is no justification for removing the clause “demanding continuous supply from the definition of HT-I CONTINUOUS CATEGORY”.

5) Commission further said that, *“It is clarified that the consumer getting supply on express feeder may exercise his choice*

*between continuous and non – continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period. In the present instance, the consumer may be given one month time from the date of issue of the order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.* The MSEDCL, on the basis of the above order, issued a circular no.88 on 26<sup>th</sup> September, 2008, highlighting the above features of the Commission’s order, *“Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry. The consumer getting supply on express feeder may exercise his choice between continuous and non – continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period”.*

6) Hence, as per the tariff order of Commission, definition of express feeder and circular No. 88 of MSEDCL they should be charged non express feeder tariff, NA charged them express feeder tariff category since the date of connection. The applicants application was for non continuous industry which is clearly mentioned in his 9A and 9B application form wherein applicant applied for 2 shift working and in 9B form which is for continuous load industry applicant said that the load is not continuous load.

Thus NA has continuously charged them with wrong bills applying express feeder (continuous) tariff every month. Hence this is a case of continuous wrong and every month there is a new cause of action. Commission has issued last tariff order on dt. 03.11.2016 applicable from November 2016 in which continuous and non continuous tariff are merged in one category. Therefore, it is contended by applicant that NA has wrongly issued energy bill by applying continuous tariff from May 2007 up to October 2016. Hence applicant vide letter dt. 23.3.2018 applied for non continuous tariff in the above period and requested for refund of the excess amount collected along with interest. Failing to get any response from NA ,applicant registered his grievance with IGRC on 03.5.2018. IGRC heard the matter and rejected grievance application vide order dt. 28.11.2018.

7) Aggrieved by the order of IGRC applicant filed this grievance application on the following grounds viz :-

A) The applicant should not have been charged continuous industry tariff since the applicant applied for non continuous industrial load and clearly specified in his application that the type of industry is non continuous industry. MSEDCL issued load sanction letter in which it was mentioned that the applicant will have to observe staggering holiday which is on Wednesday for Nagpur MIDC. There was a condition in load sanction letter which states that "Government load restriction orders as prescribed and

amended from time to time shall be applicable to you. You will have to observe the staggering holiday as decided by the Govt. which is at present Wednesday for Nagpur district". This clearly indicates that the load sanction was for non continuous industry and staggering holiday was to be observed by the applicant.

B) The applicant's feeder is not an express feeder since there are number of consumers connected on the same feeder. Definition of express feeder (dedicated distribution facilities) provided in the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 is as under.

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

C) The Commission in the tariff order applicable from 1.6.08 and further in clarificatory order in case No. 44 of 2008 said that,

*"Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry".*

According to the above directive the MSEDCL should have charged HT non continuous tariff to all the HT consumers and only

HT industries connected on express feeders and demanding continuous supply should have been charged express feeder tariff. The clarificatory order has been issued with respect to the second part of Commissions above directives and directs that the demand of continuous supply should be applied by the consumer only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period”.

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

It is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non – continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period. In the present instance, the consumer may be given one month time from the date of issue of the order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.

NA was charging non express feeder tariff to the applicant till the month of July 2008 which should have been continued after July 2008 as per directives of Hon’ble Commission in the above referred clarificatory order but MSEDCL instead of continuing existing

categorization, changed the category to express feeder tariff category which is a clear violation of Commissions tariff order and clarificatory order referred above.

D) The Hon'ble Ombudsman issued order in case No. 146 of 2009, Paul Strips and Tubes P. Ltd. V/S MSEDCL. (Copy enclosed in Ex.11) The Hon'ble Ombudsman held that-

*“13. In view of the aforesaid, the short question that arises for decision in the above background, is whether the Respondent was right in changing the Appellant’s tariff category, from HT I – Non continuous (non on express feeder) to HT I – Continuous Industry (on express feeder). Commission’s tariff order applicable from 1<sup>st</sup> June 2008, as reproduced above, also provides the following note:*

*Note:*

- i. ....*
- ii. ....*
- iii. ....*
- iv. Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry”.*

*“14. The above provision, makes it clear as to which industries are to be deemed as HT continuous and which ones, as HT non continuous industries. The Respondent’s argument is that the feeder on which the Appellant is supplied is an express feeder and it*



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

*They are:*

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

*And*

*b) Such HT industries have to demand continuous supply. **As seen for charging HT I continuous tariff, both the above conditions are required to be satisfied.***

*“16. The Commission subsequent to the tariff order of 20<sup>th</sup> June, 2008, issued a Clarificatory Order on 12<sup>th</sup> September, 2008, directing the Respondent to ensure that the clarifications given in that order, are implemented with effect from 1<sup>st</sup> June, 2008, explaining main features of the order, as under:*

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

*In the Tariff Order, the Commission has specified that “only HT industries connected on express feeder and demand continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non continuous industry”.*

*Now Commission has clarified that –*

*The consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period.*

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

*“18. Respondent clarificatory order makes it abundantly, clear that apart from the stipulation of ‘demanding continuous supply’, the consumer may give his choice within one month of the circular specifying the nature of supply it wants. The Forum observed that since the appellant has not given any choice within one month for continuous or non continuous supply, the Respondent was right in levy of tariff to the Appellant meant for continuous industry on express feeder. The Respondent banks on this part of the Forum’s order. The Appellant’s case is based on the fact that, in the same circular, it is made clear that, in case such choice is not exercised within the specified time then the existing categorization will have be continued”.*

*“19. Records show that the Appellant has not given any choice within one month from the said circular. This fact is not disputed by the Respondent also. In such a situation, latter part of the said*

*circular stipulates what is to be done in case the choice is not exercised. In such an eventuality, the existing categorization of the consumer is required to be continued. The existing tariff levied was “non continuous tariff” until June, 2008. The Appellant has not opted or demanded continuous supply. There is no such letter on record. Since the choice is not exercised, its existing categorization i.e. HT I – non continuous (not on express feeder) tariff, is bound to be continued in terms of the provisions in the clarificatory order and in the commercial circular no. 88 of the Respondent.*

Hence applicant contended that,It is abundantly clear from the above order based on Commissions directives that there are two conditions for charging HT tariff i.e. industry is to be connected on express feeder and such industry have to demand continuous demand. The applicant never demanded express feeder tariff or continuous supply from MSEDCL but during application of power he demanded non continuous supply and MSEDCL started charging the same till July 2008 which should have been continued instead of changing to express feeder tariff without any application by the applicant.

8) It is stated that the licensee can recover the tariff from the consumers as per the tariff decided by the Commission for different categories of consumers. The appellant applied for a non continuous category hence he should have been charged non continuous tariff. The section 45(1) of EA 2003 specifies “Power to

recover charges – Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license”.

(2) The charge for Electricity supplied by a distribution licensee shall be

(a) fixed in accordance with the methods and principles as may be specified by the concerned State Commission.

The licensee was charging wrong tariff which is violation of Section 45(1) of EA 2003 and this violation shall be continued even after Hon'ble Ombudsman issued the impugned order this amounts to denial of natural justice.

9) It is stated that the application to this forum is not time bared since issuing wrong bills every month amounts to cause of action every month. For this they rely on the Hon'ble Supreme Court of India order in CIVIL APPEAL NO.5151-5152 OF 2008 dt, 13.8.2008 in case of Union Of India & Anr vs Tarsem Singh. As per above order of Hon'ble Apex Court it is clear that the wrong doing by the non appellant by charging wrong tariff every month amounts to recurring / successive wrongs which occur every month and each wrong give rise to a distinct and separate cause of action. Hence the appeal is not bared by time limitation of cause of action.

10) The applicant also relied on Ombudsman's order in Review petition No.2/2014 in representation No.19/2014 of M/s. Sunder Rolling P Ltd. V/s. MSEDCL has considered the above case as squarely applicable to the appellant in the similar matter and held that there is a continuous cause of action hence it is not time bared and has allowed refund of differential charges of tariff from year 2008. Some important para of the order of Hon'ble Ombudsman in review petition No.2/2014, referring to the case of Union of India V/s. Tarsem Singh are reproduced below.

*"12. In this respect, Shri Goenka pointed out that this Tribunal clearly held that the authorities of the respondent erred in changing the category of the petitioner/appellant from HT-I Non Continuous Industry to HT-I Continuous Industry and as such, there is no question of the petitioner/appellant exercising the option at any time much less within one month from the Tariff order. The act of the respondent in issuing energy bills to the petitioner/appellant every month treating the petitioner/appellant as belonging to the category of HT-I Continuous Industry is a continuing wrong giving cause of action to the petitioner/appellant every month. Hence it cannot be said the Grievance was barred by limitation. In support of this submission, Shri Goenka placed his reliance on the Judgment of the Supreme Court dated 13.8.2008 in Civil Appeal No. 5151-5152/2008 arising out of SLP © Nos. 3820-3821/2008 (Union of India and another ..Vs.. Tarsem Singh).*

*“13.The said case relates to service law. The Supreme Court observed that the principles underlying wrongs and recurring/successive wrongs have been applied to service awl disputes and continuing wrongs refers to a single wrongful act which causes a continuing injury. Recurring/successive wrongs are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. In para 5 of the Judgment, the Supreme Court summarized the law as under.*

*To summarize, normally, a belated service related claim will be rejected on the ground of delay and latches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application in the Administrative Tribunal). One of the exception to the said rule is cases relating to a continuing wrong.*

*“14.The law laid down in the said case squarely applies to the present case also. In the present case, electric supply was released to the petitioner/appellant on 9.1.2008 and since the date of connection i.e January, 2008, the petitioner/appellant was billed as per HT-I Non-Continuous Industry. However, by communication dated 18.8.2008, the respondent informed the petitioner/appellant that it would be categorized as HT-I Continuous Industry (on Express Feeder) in view of the Revised Tariff effective from 1.6.2008. After the said communication, the respondent went on issuing bills to the petitioner/appellant by treating it under the Category HT-I Continuous Industry (on Express Feeder). As held by*

*this Tribunal in para 19 of the impugned order, the authorities of the respondent erred in changing the category of the petitioner/appellant to HT-I Continuous Industry (On Express Feeder).*

*Thus, it is a case of continuing wrong, each wrong giving rise to a distinct and separate cause of action. In view of this, the claim of the petitioner/appellant cannot be said to be barred by limitation. Thus, the order of this Tribunal needs to be reviewed. I, therefore, pass the following order:-*

*(a) The Review Petition is allowed.*

*(b) The order of the Forum dated 22.1.2014 dismissing the Grievance of the petitioner/appellant is set aside.*

*(c) The respondent is directed to change the Category of the petitioner/appellant as HT-I Non-Continuous Industry forthwith.*

*(d) The respondent is directed to review the energy bills of the petitioner/appellant from August 2008 till date applying HT-I Non Continuous tariff and refund the excess amount paid kby the petitioner/appellant along with interest under Section 62 (6) of the Electricity Act, 2003 within 90 days.*

*(e) Compliance is reported.*

*(f) No order as to cost.*

*11) Based on above facts and grounds the applicant prayed for the following reliefs before this forum.*

- i) Direct NA to consider the tariff of the applicant to non continuous tariff (non express feeder) and revise all the energy bills of the applicant from May 2007 till October 2016 date considering and applying non express feeder tariff and refund the excess amount collected from the applicant.
- ii) Direct NA to refund the excess amount paid by the applicant along with interest under section 62(6) of EA 2003.

12) (a) The NA submitted in reply that the said Grievance Application is not filed within two years as mandated in Regulation No. 6.6 of the MERC (CGRF &EO), Regulations, 2006, Therefore, without going in to the merit of the Application, the instant Grievance application should be rejected on the ground of Limitation itself. For that they rely on the Hon'ble High Court order dated 10.07.2013 passed in Writ Petition No. 1650/2012, MSEDCL V/s Mukund R. Salodkar and order dated 21.08.2018 passed in Writ Petition No. 6859-62/2017, MSEDCL V/s Jawahar Shetkari Soot Girni Ltd. which states that the Forum could not have entertained the grievance under Regulation 6.6 & 6.7 after two years from the date of the Consumer's Grievance. It is also submitted that the applicant was enjoying the continuous supply and hence charged with a Continuous Industry Tariff since the date of connection i.e. 06.10.2004. The Applicant has requested for stable power and



therefore, he never raised a single voice against the said Continuous Tariff. The consumption pattern of the Applicant reveals that he used the power supply in all three shifts. Therefore, after enjoying the benefits years together, now the Applicant's say for charging him as a Non-Continuous Tariff retrospectively can not be accepted due to Laches and inordinate delay.

(b) It is specifically submitted that the Applicant never applied in writing for change of tariff from Continuous to Non-continuous. On the contrary, the Applicant always enjoying the benefits of the continuous power supply since beginning therefore, the Applicant is not entitled for the relief claimed. In the light of above submission they prayed to reject the Grievance Application in the interest of justice.

13) Forum heard arguments of both the sides on 23.04.2019, 03.05.2019, 14.05.2019 & perused the case record.

14) On perusal and consideration of both the oral and written submissions made by both the parties, it is seen that the applicant used the supply in three shifts and as such blatantly exceeded his own demand of 2 shifts as per his 9 A and B application format. Using supply in three shifts indicates that the applicant's supply is continuous one and hence he is liable for continuous tariff as rightly contended by NA.

15) Also the applicant never gave once any representation against the levy of wrong tariff since the date NA has charged them continuous supply tariff instead of Non-continuous tariff and enjoying the benefits of the continuous power supply since beginning. Had they

represented at least once then principles underlying wrongs and recurring/successive wrongs as per the Judgment of Supreme Court dt 13.08.2008 in Civil Appeal No.5151-5152008 arising out of SLP© Nos.3820-3821/2008(Union of India and another....Vs.....Tarsem Singh)would have applied to the present case also.

16) Similarly applicant relies on Electrical Ombudsman order in Review petition No.2/2014 in representation No. 19/2014 of M/s.Sunder Rolling P.Ltd V/s.MSEDCL being the similar matter. But it is seen that in that case, the applicant applied to NA on dt.3.03.2010 requesting to change its tariff category to Non-express feeder but NA did not consider the request given by applicant .Hence the facts of instant application are squarely different and hence the said EO decision doesn't apply in the present case.

17) It is clearly seen that cause of action in the instant case arose in the year 2007, Now suddenly in the year 2018 ,he raised his grievance about the wrong tariff .Hence as the grievance application is not filed within two years as mandated in Regulation No.6.6 of the MERC(CGRF& EO) Reg.2006,the instant application is not tenable as per law, although there are MERC's directives given for continuous and Non-continuous tariff passed in various orders since 2007 in this regard.

18) It is also seen when commission issued tariff order dt.03.11.2006 applicable from November 2016 in which continuous and Non-continuous tariff are merged in one category. it is changed immediately in November 2016 by non-applicant sumoto. Hence applicant is getting its advantage from November 2016.

19) It is also seen that on one hand applicant is enjoying the facilities of continuous supply ,but on the other hand just wants to grab/avail refund due to difference in tariff. If it is given, then licensee shall incur heavy revenue loss, as rightly contended by the Non-applicant. This act of applicant is not in the interest of the other general consumers. Hence Non-applicant's action of non-refund due to tariff difference is justified.

20) From the above discussion, we are of the opinion that there is no force in the grievance application and we hold that the application deserves to be dismissed .Hence we proceed to pass the following order by majority

**ORDER**

1. Application is dismissed.
2. No order as to costs.

Sd/-  
**(Mrs. Asmita A. Prabhune)**  
MEMBER

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

Sd/-  
**(Arvind J. Rohee)**  
Chairperson