

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

**Case No. CGRF/AZ/ARC/738/2019/23
Registration No. 2019050053**

Date of Admission : 21.05.2019.
Date of Decision : 23.09.2019.

M/s. Nath Pulp & Paper Mills Pvt. Ltd., : COMPLAINANT
S.No.72, Wahegaon Paithan Tq. Paithan
(Consumer No. 490019001625)

VERSUS

Maharashtra State Electricity Dist. Co. Ltd., : RESPONDENT
through it's Nodal Officer, EE(Admn),
Rural Circle, Aurangabad.

The Executive Engineer,
Rural Circle, Aurangabad

For Consumer : Shri. H.A.Kapadia
For Licensee : Shri. Y.B.Nikam
EE, Rural Circle, Aurangabad

CORAM

Smt. Shobha B. Varma, Chairperson
Shri. Makarand P Kulkarni, Tech. Member/Secretary
Shri. Vilaschandra S. Kabra Member

CONSUMER GRIEVANCE REDRESSAL FORUM DECISION

- 1) The applicant M/s. Nath Pulp & Paper Mills Pvt.Ltd.,S.No.72, Wahegaon Paithan Tq. Paithan is a consumer of Mahavitaran having Consumer No. 490019001625. The applicant has filed a complaint against the respondent through the Executive Engineer i.e. Nodal Officer, MSEDCL Rural Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 21.05.2019.

The brief facts of the dispute are as under:-

- 2) The petitioner is authorized signatory of M/s Nath Pulp & Paper Mill Ltd. situated at Gut No.72, Village Vahegaon Tq. Paithan Dist. Aurangabad. The petitioner is engaged in manufacturing of various types of Papers and bears Consumer No. 490019001625. The petitioner has taken 33 Kv HT connection having contract demand and connected load of 3000 KVA and 6000 kW respectively for his paper mill. The tariff levied is HT (Industry).
- 3) The petitioner has submitted that Hon'ble Commission has passed tariff order dt.31.05.2008 incase No.72/2007. The said order was made effective from 01.06.2008. As regards to issue of applicability of tariff for HT-I Continuous and Non continuous category, Hon'ble Commission ruled 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".

- 4) It is submitted by the petitioner that he was being supplied electricity under HT-I Continuous category and issued bills as per HT Continuous tariff. However, since there were interruptions in electricity supply, the petitioner contacted Chief Engineer, of Respondent Company for providing uninterrupted supply. It is submitted that the Chief Engineer, after making necessary enquiry, confirmed vide his letter Dt.20.02.2006 that the 33 Kv feeder from which supply has been provided to petitioner's factory is not an Express Feeder.
- 5) The petitioner has stated that, as the supply provided was not from express feeder, he submitted application for change in tariff from Continuous to Non continuous in the office of Respondent on 18.06.2008 & it was within stipulated time limit of one month from the date of passing tariff order i.e. 31.05.2008. However, in spite of follow up, no action was taken by Respondent nor any communication was received by the petitioner.
- 6) The petitioner has submitted that, Hon'ble Commission thereafter passed another order on dt. 12.09.2008 (Case No.44/2008) on the petition filed by Respondent for providing clarification regarding order dt. 31.05.2008 passed incase No.72/2007. Hon'ble Commission in the issue related to change of tariff from Continuous to Non continuous, ruled as under:

Applicability of HT-1 (Continuous Industry) Commission's Ruling and Clarification:

"The commission is of the view that MSEDCL should not ignore the benefit of load relief that could be achieved in case certain HT-1 continuous industries, who are presently not subjected to load shedding,

voluntarily agree to one day staggering like other industries located in MIDC areas. The HT industrial consumers connected on express feeder should be given option to select between Continuous and Non-continuous type of supply and there is no justification for removing the clause “demanding continuous supply” from the definition of HT-1 continuous category. 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 form the date of issue of this order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued.”

- 7) It is submitted that, Hon’ble Commission, thereafter passed tariff order dt.10.09.2010 in case No.111/2009 and continued that same provision as stipulated in previous tariff order dt.12.09.2008 (Case No.44/2008) in respect of exercising powers of shifting from continuous to Non continuous category.
- 8) That, as per directives issued in the order dt. 10.09.2010, the petitioner once again submitted application for change of his tariff category from Continuous to Non-continuous in the office of Respondent on 23.09.2010. However, no cognizance of the application was taken by Respondent and Respondent failed to refund the tariff difference amount to the petitioner.
- 9) It is submitted that, based on the request and representations made from time to time for change of tariff, Chief Engineer (Commercial) vide

- letter dated 16th September 2016 advised to the Superintending Engineer to submit audited financial impact of change of tariff from Continuous to Non continuous to the consumer from August 2008 to July 2015.
- 10) It is submitted that, in response to the letter of Chief Engineer (Commercial), Superintending Engineer, Rural Circle, Aurangabad vide his letter dated 17th October 2016 submitted financial impact statement for the period August 2008 to July 2015.
 - 11) That, on one hand Respondent was not refunding tariff difference amount to petitioner and many other consumers in state of Maharashtra and on other hand few consumers were given benefit of tariff change even though the application filed by them were after stipulated time of one month on the ground of provision in MERC SOP Regulations.
 - 12) It is stated that, due to this conflicts of time limit for exercising option of tariff change, a writ petition (W.P.No.5437/2013) was filed by a consumer before High Court at Nagpur. The Respondent thereafter, filed a miscellaneous application (M.A.5,6 & 7 of 2015) before Hon'ble Commission which was registered as case No.94/2015.
 - 13) That, Hon'ble Commission, after going in details of conflicts, passed its order on 19.08.2016 (case No.94/2015) and directed Respondent to consider all such pending application and submit compliance regarding refund and its impact within three months.
 - 14) That, it is in only after Hon'ble Commission's order, Chief Engineer (Commercial), Mumbai of Respondent MSEDCL Company issued letter bearing No.16720 dt.10.07.2007 to Superintending Engineers of all

- circles in state of Maharashtra and provided methodology for refund of tariff difference amount to respective consumers.
- 15) It is submitted that, in view of MERC order and letter dt. 10.07.2017 issued by Chief Engineer (Commercial), the petitioner once again submitted application to Respondent on 03.01.2018 and requested him to refund the tariff difference amount from date of application i.e. 18.06.2008.
 - 16) That the petitioner has submitted three Nos. of application to respondent for refund of tariff difference amount. The first application was submitted on 18.06.2008 and the 2nd and 3rd on 22.09.2010 and 20.08.2012 respectively. That, all the above three applications are acknowledged by Respondent and further the reference of same are made in all future correspondences by Respondent.
 - 17) The petitioner has submitted that, in spite of receipt of all three applications of above mentioned dates, Respondent while refunding the amount considered the period of refund from 01.08.2012 onwards and refunded /adjusted the amount through monthly electricity bills.
 - 18) That, in view to get refund of tariff difference amount for the balance period i.e. from date of application 18.06.2008 to 31.07.2012, the petitioner once again submitted application to Superintending Engineer on 16.12.2017 and to the Deputy Managing Director on 03.01.2018 requesting to refund for the balance period of June 2008 to July 2012.
 - 19) The petitioner has submitted that, instead of settling the claim, the Respondent vide his letter dated 17.02.2018 stated that, petitioner's letter for change of tariff dated 18.06.2008 is not in his record. Therefore, Committee has decided to refund the differential tariff

amount w.e.f. 01.08.2012. Petitioner submits that petitioner is having duly acknowledged copy from Respondent of the letter dated 18.06.2008.

- 20) The petitioner has submitted that, since Respondent are not willing to settle his genuine claim for refund of tariff difference amount for period June 2008 to July 2012, he requested "TEAM MAITREE" (Investor Cell Facilitation Cell) formed by Govt. of Maharashtra to direct Respondent to refund the tariff difference amount. That, the Respondent is not taking any steps towards refund of tariff difference amount for period June 2008 to July 2012.
- 21) That, as per provision of section 62(6) of Indian Electricity Act 2003, the petitioner is eligible to get interest on the amount due with Respondent at prime lending rate of SBI.
- 22) **It is prayed that,**
 - 1) Respondent may be directed to refund tariff difference amount for period of June 2008 to July 2012.
 - 2) Respondent may be directed to pay interest as per provision of section 62(6) of Electricity Act 2003.
 - 3) Respondent may be directed to pay suitable compensation towards intentional delay in settling claim of petitioner.

The Respondent has submitted say as under (P.No.70):

- 23) That, as per the complainant information and document the first application date was 18.06.2008 and subsequent application date was 22.09.2010. However, as per the Manager (HR) Rural Circle, Aurangabad letter dated 13.01.2017, it is mentioned that the letter of dated 18.06.2008 & 22.09.2010 are not inwarded in the inward register of

- Circle Office, also the signature is not of the employee who was on duty for that particular date. It has been confirmed through Manager (HR) Rural Circle, Aurangabad letter No.01642 of date 17.04.2018. Hence, claim is not established.
- 24) The complainant has never demanded the office note & other documents of financial impact statement from August 2008 to July 2015 to this office through any official letter.
- 25) As per the letter No.3076 dated 30.01.2019 of Superintending Engineer (Commercial), that vide letter PR-3/Tariff/No.5990/ Dated 21.03.2018 Corporate Office has requested to Hon'ble MERC about guidance for passing of refund of interest in order in case no. 94/2015 dated 19.08.2016, hence interest on tariff difference amount could not be considered on the amount of difference.
- 26) The period of refund of tariff difference from June 2008 to July 2012 as demanded by the consumer is not established from the record of Rural Circle, Aurangabad. Hence, there is no question of refund of tariff difference for the period from June-2008 to July 2012.
- 27) It is prayed to dismiss the complaint.

In the rejoinder (P.NO.90) the petitioner has submitted that :-

- 28) That, the Respondent at para 1, confirms that the 33 Kv supply provided to the petitioner factory was not from Express feeder right from the date of release of connection i.e. from Sept-1978. The said fact was confirmed by the Chief Engineer, Aurangabad Zone vide his letter dtd.20.02.2006.

- 29) That, after acceptance of the fact that the supply provided to the petitioners factory was not from Express feeder, it was expected from Respondent to change the tariff on its own and to issue all further bills as per HT Non Express tariff. It was therefore unfair on the part of Respondent to raise the dispute on the issue of date of application.
- 30) That, the copy of letter dt. 20.02.2006, issued by Chief Engineer on complaint dt.06.02.2006, was also sent to the Superintending Engineer, Rural Circle. That the Superintending Engineer has also accepted the fact that the supply provided to the petitioner's factory was from Non Express feeder. In such situation the dispute now raised regarding date of submission of application is unfair.
- 31) That, as per tariff order dt.31.05.2008 the petitioner has exercised option for change of tariff from Express to Non-express & submitted application on 18.06.2008 for change of category. It is submitted within one month from date of Commission's tariff order. That, it was already declared and accepted by the Chief Engineer (letter dt. 20.02.2006) as well as Respondent that supply provided to the petitioner was not from 33 Kv Express feeder. Further, as per provision of MERC SOP Regulations 2006, the effect of tariff change is required to be given from 2nd billing cycle from date of application. In view of above provision and facts, it was mandatory on the part of Respondent to change petitioner's tariff category from July or August 2008.
- 32) That, no communication was received from Respondent in spite of letter dt.20.02.2006 issued by Chief Engineer, MSEDCL & on application dt. 18.06.2008. Hon'ble Commission thereafter passed another tariff order on 10.09.2010 and again made provision for consumers to exercise

- option of shifting from Express to Non Express category. Accordingly, he has once again submitted application on 22.09.2010, which was within one month from date of Commission's order, in the office of Respondent.
- 33) That the Respondent vide his letter dt. 17.10.2016 submitted financial impact statement of change of tariff to Chief Engineer Commercial, Mumbai. The period of revision of tariff shown in the said statement is from August 2008 to July 2015. This fact alternatively confirms that while submitting impact proposal, the application dt. 18.06.2008 and 22.09.2010 were on the record of Respondent Company.
- 34) That, while submitting any application/letter, the acknowledgement given by any of the officer or Respondent company is considered as proof of submission. The consumer at large is not duty bound to look after whether inward number is put on same or whether the application has reached concern officer or a particular section of Respondent Company. Refusal of refund by Respondent is not proper. That, the letter dtd.10.07.2017, issued by Chief Engineer, Mumbai in the name of Superintending Engineer, Rural Circle, Aurangabad also does not bear any inward No.
- 35) The letter dt. 15.09.2016 issued by Chief Engineer, Mumbai and office note dt.18.09.2016 includes references of earlier applications dt.18.06.2008. That, Respondent are trying to deprive the petitioner from getting their Legitimate claim.

The reply to rejoinder (P.No 96) filed by Respondent is briefly as under:-

- 36) That, the consumer is demanding continuous power supply for his factory, is evident from his letters dtd. 06.02.2006, 18.01.2006, 05.02.2006 & the letter dtd. 03.02.2006 from Assistant Director of Industries, Aurangabad Division. In pursuance to application of the consumer for continuous supply of electricity & furthermore the minutes of meetings regarding continuous supply to M/s Nath Pulp & Paper Mill dtd.19.01.2001 wherein the issue relating to providing continuous supply to said consumer & solution therein is included.
- 37) The Chief Engineer, vide letter dated 20.02.2006 has informed the factual position regarding continuous power supply to the consumer prevailing at that relevant time. Thereafter the Superintending Engineer, Rural Circle, vide letter dtd. 03.03.2006 has informed ED-III regarding uninterrupted/continuous power supply in respect of M/s. Nath Pulp & Paper Mills Pvt. Ltd. along with the solution, and thereby continuous supply was provided to the petitioner. This fact is fortified by the agreement executed by MSEDCL & consumer for existing load reduction wherein the tariff of the consumer was mentioned as HT-I Express (continuous). Even the sanction letter dated 24.09.2012 in respect of load reduction of M/s Nath Pulp & Paper Mill Pvt. Ltd. bears the subject as sanction of load reduction on existing 33 Kv express feeder by introducing 3rd CT (60/5 Amp.) in CD & CL to petitioners factory at Sr.No.72, Wahegaon, Tq. Paithan Dist. Aurangabad. These documents depict that the consumer was on Express feeder & continuous supply

was provided to him by removing the hurdles as mentioned in the letter of Chief Engineer, Aurangabad Zone letter 20.02.2006.

Hence, the consumer was knowing that he was availing continuous power supply & applied for change of tariff category on 20.08.2012 & accordingly refund was given to consumer.

- 38) That the consumer was knowing that he was on express feeder & he has to apply change of tariff category as per riders laid down in tariff orders. But the applications of the consumer were not in-warded in Inward Section.
- 39) That, the Chief Engineer (Commercial) in pursuance to consumer letter dtd.30.06.2016 has informed this office to submit the audited financial impact of change of tariff from continuous to non-continuous tariff from August 2008 to July 2015. In view that the consumer in the letter dt. 30.06.2016 has contended that he has applied for change of tariff category in 2008. Hence, as such Chief Engineer (Commercial) has further asked this office to certify the date of receipt of application dtd. 18.06.2008 to Aurangabad Rural Circle Office. That, the Chief Engineer (Commercial) has informed to this office to verify the authenticity of the application as per consumer's contentions, this doesn't in any way confirm that the applications dtd. 18.06.2008 & 22.08.2010 were on records of the company. On the contrary the documentary evidence in the office of MSEDCL conspicuously shows that the applications of the consumer were not in-warded. Hence, complaint may be dismissed.
- 40) We have perused the pleadings; documents submitted by both the parties and heard arguments advanced by Consumer Representative

Shri. Kapadia & Respondent Nodal Officer, Shri. Y.B.Nikam, Executive Engineer, Rural Circle, Aurangbad.

- 41) Following points arise for our determination & we have recorded its findings for the reasons to follow:

Sr. No.	POINTS	ANSWER
1	Whether the petitioner is entitled to receive tariff difference for the period June 2008 to July 2012, alongwith interest?	No
2	Whether the petitioner is entitled for compensation for delay in settling the claim by the Respondent?	No
3	What order & cost?	As per final order

REASONS

- 42) **PONIT NO.1:-** There is no dispute between the parties that petitioner is continuous process industry. Hon'ble MERC in case No. 72/2007 has ruled 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”.

- 43) In case No.44/2008, Hon'ble MERC, in its order dated 12.09.2008, has ruled that:

“The commission is of the view that MSEDCL should not ignore the benefit of load relief that could be achieved, in case certain HT-1 continuous industries, who are presently not subjected to load shedding, voluntaries, agree to one day staggering like other industries located in MIDC areas. The HT industrial consumers connected on express feeder

should be given option to select between continuous & Non-continuous type of supply & there is no justification for removing the clause “demanding continuous supply” from the definition of HT-1 continuous category. It is clarified that the consumers getting supply on express feeder may exercise his choice between continuous & Non-continuous supply only once in the year, within the first month after issue of the tariff order for the relevant tariff period. In the present instance, the consumer may be given one month time from the date of issue of this order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.

44) Whether the petitioner was on express feeder?

Referring to minutes of meeting dt. 19.01.2001 (P.NO.101), letter dtd. 20.02.2006 issued by MSEDCL (P.NO.15) & letter dtd. 03.03.2006 (P.No.107, 108) refers to the fact that it is not express feeder hence admitted by MSEDCL that the petitioner is not on express feeder, but the supply is extended from common feeder. As such petitioner is not on express feeder is proved. However, it is seen from the above correspondence that, apart from requesting for un-interrupted power supply for his continuous process industry, no other grievance is raised by the petitioner.

45) Keeping in mind the directives issued by MERC in aforesaid cases, it has to be seen whether the petitioner has exercised option from Continuous to non-continuous and since when it is entitled for tariff difference.

46) In this regard petitioner has relied upon two letters dtd. 18.06.2008 (P.No.16) & dtd. 22.09.2010 (P.No.17).

- 47) Referring to letter dt.18.06.2008 wherein the petitioner has informed to Superintending Engineer, MSEDCL, Rural Circle, Aurangabad to change its category from Continuous to Non-continuous with effect from 1 June 2008. The acknowledgement on it bears signature dtd.19.06.2008 & seal (of English language) of office of Superintending Engineer, Rural Circle, Aurangabad. Letter dtd. 22.09.2010 (P.No.17) was issued by the petitioner addressed to Superintending Engineer communicating his option to change category from Continuous to Non-continuous w.e.f. 01.09.2010 as per tariff case No.111/2009. By way of acknowledgement, it bears signature & seal (in Marathi language) of the office of Superintending Engineer, Rural Circle, Aurangabad.
- 48) It is important to note that both these letters do not refer to inward No. of the office of MSEDCL. MSEDCL has denied to have received these letters & submitted that those are not inwarded in the office of the Respondent & not received in their office.
- 49) Receipt date by the Respondent of these letters carry importance for the reason that as per order passed in case No. 94/15 by Hon'ble MERC, method for scrutiny of the pending applications was decided which is reflected in the letter dtd. 10.07.2017 (P.No.19). The Board Resolution approved the method as follows:-

"In case of dispute on the date of application /submission of application for tariff change the same may be verified by Committee headed by Chief Engineer (O&M Zone) & SE (Circle Office), SE (Neighbor Circle Office), Legal Advisor (Zonal Office) & Senior Manager (Circle Office) as other members of the Committee.

The verified proposal shall be submitted by this Committee to Joint Managing Director/Regional Director within a period of one week from the date of receipt of proposal. The said proposal shall be decided upon by Jt. MD/RD within a period of one week from the date of receipt of proposal.

The complete details & effect of such tariff changes be given to consumers through MSEDCL IT System only in transparent manner”.

- 50) The petitioner, in support of its case, has pointed out letter dtd. 16.09.2016 (P.NO.18) & office note dt.18.09.2016 (P.No.26). It is argued by Consumer Representative Shri. Kapadia that reference of its letters was also made in above referred future internal correspondence of MSEDCL. In the letter dt.16.09.2016 written by Chief Engineer to Superintending Engineer, the following contents are important.

“This office vide letter 2 above had asked circle office to submit detail report regarding request of consumer vide letter dtd. 18.06.2008 & its cognizance thereof. While going through the reply submitted by your office vide letter 3 above it can be concluded that the consumer has submitted letter dt. 18.06.2008 to the Aurangabad Circle Office. However, in view of decision of MERC in case No. 94 of 2014, may be considered then, the effect will have to be given as per application dt. 18.06.2008. Accordingly you are hereby informed to submit the Audited financial impact of change tariff from continuous to Non continuous to the consumer from Aug-2008 to July 2015.

In view of above, you are hereby once again informed to certify the date of receipt of application dt. 18.06.2008 to the Aurangabad Circle Office of M/s Nath Pulp & Paper Mills Ltd. (Consumer No.490019001625) and

your action taken on this letter before processing the request of consumer”.

- 51) Above contents goes to show that Chief Engineer was himself not assured & satisfied about receipt of the letter, so again issued direction for certification date of the letter dt.18.06.2008. Fact remains that while writing this letter, the original letter was not before Chief Engineer.
- 52) Accordingly, financial impact statement was submitted along-with coverage letter dt. 17.10.2016 (P.No.21) by Superintending Engineer to Chief Engineer (Commercial). Copy of Office Note dt. 18.09.2016 (P.No.26) submitted by Dy. Executive Engineer (HT Billing) is produced wherein while giving references of previous letter, these two letters dt. 18.06.2008 & 22.09.2010 & of 20.08.2012 were quoted at Sr. Nos. 1 to 3. Rather pertinent to note that inward Nos. of these letters are not quoted in the office Note. While writing office notes the original letter dt.18.06.2008 & 22.08.2010 were not before the officer.
- 53) On the other hand the Respondent, in support of their denial of receipt of these two letters, produced reply letter dt. 13.01.2017 (P.No.76). In this letter, the Manager (HR) has informed to the Superintending Engineer that Xerox copy of letter dt. 18.06.2008 is produced and on verification of the acknowledgement, the inward register was not available. The then clerk Shri. Namdeo Malode had informed orally that as per direction of the Manager, inward register was produced in the office of Joint Director. However, the Manager though has personally inquired in the office of Joint Director (V&S), but the inward register was not available there. Shri. Malode was directed to produce the letter

immediately by checking of record room. However Shri. Malode has submitted following explanation:-

“मे.नाथ पल्प व पेपर मिल लिमिटेड यांचे पत्र क्र. NPPM/MSEDCL/०८. ०९/१५ दिनांक १८.०६.२००८ रोजी सोडून घेतल्याचे कंपनीने सादर केलेल्या छायांकीत प्रतीवरून निदर्शनास येत असले तरी मी विनम्रपणे कळवितो की, सदर छायांकीत प्रतीवर पत्र सोडवून घेतलेली स्वाक्षरी माझी नसून ते पत्र माझ्याकडे आवक करण्यासाठी आलेलेच नाही ”. Hence, it was communicated that letter dt.18.06.2008 was not inwards in their office. About letter dt.22.09.2010, the Respondent has produced on record Xerox copy of inward register from 18.09.2010 upto 24.09.2010 (Pg. No. 78 to 85). Receipt of letter dtd 22.09.2010 is not appearing in this inward register.

- 54) The Respondent has also produced on record report of Committee dt.21.07.2017 (P.No.132). It goes to show that the Committee has perused the application of petitioner dt. 20.08.2012 for change of tariff from Continuous to Non-continuous & as per order of MERC in case No. 19/12 dt. 16.08.2012 considering applicability of tariff order from 01.08.2012, the date of application of consumer is considered as 01.08.2012.
- 55) As per the aforesaid Committee report, the then Chief Engineer has submitted proposal (P.No.130, 131) for change of tariff of petitioner from 01.08.2012. Accordingly, Superintending Engineer (OP), Aurangabad Region, by his Office Note dt. 22.08.2017 (P.No.128, 129) recommended change in tariff category of petitioner from 01.08.2012. On approval of the said Office Note by Jt. Managing Director the Superintending Engineer by letter dt. 24.08.2017 (P.No.127) communicated to Chief Engineer for processing the proposal of the petitioner for tariff change from 01.08.2012.

- 56) It appears that since these two letters dt. 18.06.2008 & 22.09.2010 were not received by the MSEDCL Office, they are not referred by the Committee in their report dt. 21.07.2017.
- 57) It is important to note that in the tariff order dtd. 31.05.2008, case No.72/2007, there was no direction for exercising option of changing tariff category from Continuous to Non-continuous, hence there was no reason to specifically submit application within one month of this tariff order. It is also to note that the claimed letter dated 18.06.2008 is two days prior to the final order dated 20.06.2008 in case No.72 of 2007 which also has no direction for exercising option. This letter is also seen to be almost three months premature to MERC order dated 12.09.2008 in case No. 44 of 2008 when any such option and time limit was pronounced by MERC for the first time. If any letter exercising option of change in tariff category from Continuous to Non-continuous with reference to MERC order, then it has to be in reference to the MERC order dated 12.09.2008 in Case No. 44 of 2008 and not before that. Not only that, the petitioner has not submitted any specific explanation as to why till 20.08.2012 it has not inquired about disputed letter with MSEDCL or no grievance was ever raised before appropriate redressal forum. Even it appears that till 30.06.2016 & thereafter also the petitioner did not inquire in writing about the disputed two letters with MSEDCL. Silence on the part of petitioner speaks volume. Correspondence by way of letter of petitioner dt. 09.04.2018 (P.No.27) & its reply dt. 17.04.2018 repeats the same facts.
- 58) Considering the entire record, it is found that, when the letter dt. 16.09.2016 (P.No.18) was issued by the Chief Engineer (Commercial), he

was not having before him the original letter dt. 18.06.2008, alleged to be sent to the Respondent. It is only on the basis of earlier letter dt. 09.08.2016, he has made reference about letter dt. 18.06.2008. Further he himself was not assured about receipt of disputed letter dt. 18.06.2008 & hence requested for further verification. Again, while preparing Office Note, the concern Deputy Executive Engineer also was not having before him those original or copy of the two disputed letters dt. 18.06.2008 & 22.09.2010 he has also made reference of these letters on the basis of earlier letter dt. 09.08.2016. It is important to note that since the date of sending letter 18.06.2008 & 22.09.2010, the entire correspondence produced on record does not show that at any point of time original was seen by any officer of MSEDCL. All the while, the communication was based on the only previous references & without inward Nos.

- 59) Considering the documents & all circumstances it is transpired that these two disputed letters dt. 18.06.2008 & 22.09.2010 original were not seen by any of the Officer, which supports about its non-receipt.
- 60) In this back-drop, though these letters bear the acknowledgement & seal of Respondent's Office & Signature, still the said evidence is not sufficient proof to prove the date of receipt of application by MSEDCL. We are not assured & satisfied about the fact that these letters were received by the Office of MSEDCL. So, under these circumstances, no inference is allowed to be drawn of exercising option on the given dates i.e. 18.06.2008 & 22.09.2010. As such, we hold that rejection of the claim of the petitioner for June 2008 to July 2012 is just & proper. We feel that for want of evidence, the

petitioner failed to establish his claim & not entitled for it with interest.

We answer point No.1 in the negative.

- 61) **PONIT NO.2:-** On 19.08.2016, order in case No. 94/15 was passed. Accordingly circulars were issued and actions were finalized by MSEDCL. Ultimately, refund of tariff difference amount was credited in their future bills. So, in settling the claim of the petitioner time so consumed is not deliberate on the part of the Respondent. So also considering disentitlement of the petitioner, point No.2 is answered in the negative. We proceed to pass following order in reply to point No.3

ORDER

- 1) Complaint stands dismissed.
- 2) Parties to bear their own cost.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Makarand P. Kulkarni
Member / Secretary

Sd/-
Vilaschandra S.Kabra
Member