

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 130 OF 2024

In the matter of retrospective recovery towards subsidy given in D/D+ Zone.

Ichalkaranji Textile Development Cluster Ltd.Appellant
(Consumer No. 250389051600)

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Kolhapur.....Respondent
(MSEDCL)

Appearances:

Appellant : Pratap Hogade, Representative
Respondent: 1. P. T. Rathi, Executive Engineer, Ichalkaranji
2. M.P. Nalawde, Astd. Law Officer
3. Mandar Bodake, Dy. Ex. Engineer


Coram: Vandana Krishna [I.A.S. (Retd.)]

Date of hearing: 3rd October 2024

Date of Order : 4th December 2024

ORDER

This Representation was filed on 22nd July 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 29th May 2024 in Case No. 88 of 2023 passed by the Consumer Grievance Redressal



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Secretary
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Forum, Kolhapur (the Forum). The Forum rejected the grievance application. The Appellant paid the statutory deposit of Rs. 25000/- on 9th August 2024 as per Regulation 19.22 (h) of CGRF & EO Regulations 2020. This Representation was registered on 9th August 2024.

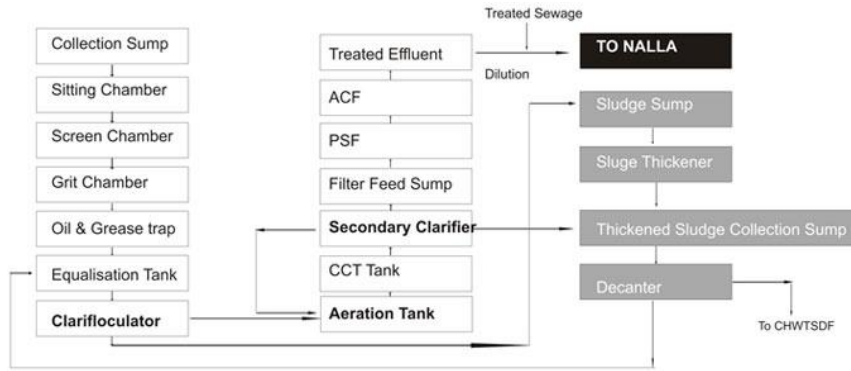
2. Preamble:

- (i) Ichalkaranji (district Sangli, D+ Zone) is known as the Manchester of Maharashtra. Textile industry has played an important role in the growth of the city. It houses a number of small and medium scale textile units, which are export oriented. Ichalkaranji Textile Common Effluent Treatment Plant Ltd. (ICH-CETP) has a cluster of 67 units, which are involved in activities like bleaching, dyeing, printing and finishing of cotton, synthetic and blended fabrics. The Effluent Treatment Plant treats contaminated wastewater from the textile units, and releases clean water for agriculture. The wastewater is treated by means of physical, chemical or biological processes. The city has also been selected for funding under integrated industrial upgradation scheme funded by the Govt. of India (GoI) and Govt. of Maharashtra (GoM). The objective of the scheme is to develop the textile cluster and upgrade technology to make the city globally competitive.
- (ii) Ichalkaranji Textile Development Cluster (ITDC) has installed 12 MLD CETP at Ichalkaranji, Tal: Hatkangale, Dist: Kolhapur, Maharashtra. The Plant is under operation since June 2011. A Memorandum of Understanding (MOU) was entered on 11/02/2011 between ICH-CETP and Ichalkaranji Textile Development Cluster Ltd. through Ichalkaranji Municipal Council for operation and maintenance of the said CETP with terms and conditions mentioned in the MOU. Accordingly, the Appellant applied for a new connection which was released on 22/04/2011 after due official procedure.



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(iii) Detailed Process chart of the CETP units.



(iv) The GoM vide Government Resolution (GR) dated 29/06/2016 declared a subsidy / concession in electricity tariff for industrial consumers, including textile units as per resolution below: -


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महाराष्ट्र शासन:- उद्योग, उर्जा व कामगार विभाग
शासन निर्णय क्रमांक : संकिर्ण-२०१५/प्र.क्र.२३८/उर्जा-५

विदर्भ व मराठवाडा व उत्तर महाराष्ट्र D व D+ क्षेत्रातील औद्योगिक ग्राहकांना वीज दरात सवलत देण्याबाबतचा दिनांक २९ जून २०१६ चा शासन निर्णय.

विदर्भ व मराठवाडा या प्रदेशातील औद्योगिक विकासास चालना देण्याकरीता या विभागाचा उर्वरित महाराष्ट्र तसेच शेजारील राज्यांचा औद्योगिक व इतर घटकांचा तुलनात्मक अभ्यास करून अहवाल सादर करण्याकरीता शासनाने विभागीय आयुक्त, नागपूर यांच्या अध्यक्षतेखाली एक समिती उपरोक्त क्र.१ येथील शासन निर्णयान्वये गठीत केली होती. सदर समितीने शासनास सादर केलेला अहवाल नागपूर येथे दिनांक २२/१२/२०१५ रोजी झालेल्या मंत्रीमंडळ बैठकीत सादर करण्यात आला होता. आंतरविभागीय समितीने शासनास सादर केलेल्या अहवालातील शिफारशीची छाननी करून उपयुक्त मुख्य बाबी निश्चित करण्यासाठी मा.मुख्य सचिवांच्या अध्यक्षतेखाली सचिव समिती नियुक्त करण्याचा निर्णय झाला. तसेच उत्तर महाराष्ट्र व D+ झोनमधील सूतगिरणी उद्योगांना वीज दरात सवलत देण्याचाही विचार करण्यात यावा असे ठरले. त्यानुसार वरील क्र.२ येथील शासन निर्णयान्वये मुख्य सचिवांच्या अध्यक्षतेखाली सचिव समिती नियुक्त करण्यात आली होती. सदर सचिव समितीने, आंतर विभागीय समितीने सादर केलेल्या अहवालातील शिफारशीची छाननी करून उपयुक्त मुख्य बाबी निश्चित केल्या होत्या. त्यानुषंगाने दिनांक २४ मे २०१६ रोजी मंत्रीमंडळासमोर सादर केलेल्या प्रस्तावावर धोरणात्मक निर्णय घेण्यासाठी मंत्रीमंडळ उपसमिती उपरोक्त क्र.३ येथील शासन निर्णयान्वये गठित करण्यात आली होती.

त्यानुषंगाने विदर्भ - मराठवाडा, उत्तर महाराष्ट्र D व D+ क्षेत्रातील औद्योगिक ग्राहकांना वीज दरात सवलत देण्याची बाब शासनाच्या विचाराधीन होती.


शासन निर्णय:- विदर्भ - मराठवाडा, उत्तर महाराष्ट्र, व क्षेत्रातील औद्योगिक ग्राहकांना वीज दरात सवलत देण्यात यावी.

अ) इंधन समायोजन आकार सवलत :-

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ब) उद्योगांच्या कार्यक्षमतेवर आधारित सवलत

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Secretary
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- (v) Subsequently the GoM by its GRs dated 24/03/2017, 23/11/2017, 06/02/2019, and 08/03/2019 declared concession in power tariff to Industries in Vidarbha, Marathwada, North Maharashtra, D and D+ areas. Thereafter, in order to streamline the concessional rates given to these manufacturing industries, Government of Maharashtra vide GR dated 23/06/2022 issued revised electricity tariff concession which is applicable from 01/04/2022.
- (vi) The Appellant was a beneficiary of this Subsidy Scheme for the period from July 2016 to Oct. 2021. The Subsidy was suddenly stopped from Nov. 2021 onwards on the ground that this CETP does not fall in the category of 'manufacturing' units.
- (vii) The Indus Tower filed a Writ Petition (WP) in Bombay High Court (WP No. 11875/2023) against the retrospective recovery of subsidy in Jul 2023 bill. The High Court directed the government to take a review of this policy under the Chairmanship of Principal Secretary, Industry, Energy, and Labour Department, Government of Maharashtra with MSEDCL and Indus Company Authority. The meeting was conducted on 06/10/2023.
- (viii) The Chairman and Managing Director MSEDCL vide his letter dated 05/09/2023 informed the Principal Secretary, Industry, Energy, and Labour Department regarding retrospective recovery of subsidy. The important abstract of this letter in Marathi is as below:-


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विदर्भ, मराठवाडा, उत्तर महाराष्ट्र, डी व डी+ क्षेत्रातील उद्योगांना लागू असलेली सवलत प्रत्यक्ष उत्पादन न करणाऱ्या घटकांकडून वसूल करण्याबाबतचा दिनांक ५ सप्टेंबर २०२३ चा शासननिर्णयातील महत्वाचा भाग खालीलप्रमाणे.

"मा. वीज नियामक आयोग यांनी वेळोवेळी निघरित केलेल्या वीजदर आदेशामध्ये उत्पादन करणाऱ्या घटकांसह प्रत्यक्ष उत्पादन न करणाऱ्या घटकांचा अथवा केवळ उद्योगाचा दर्जा देण्यात आलेल्या औद्योगिक घटकांचा देखील "औद्योगिक वर्गवारी" मध्ये समावेश केलेला आहे. जसे धोबी / लॉन्ड्री सांडपाणी प्रक्रिया सयंत्र, वीज निर्मितीकरीता स्टार्ट-अप पॉवर, राज्य शासनाच्या माहिती व तंत्रज्ञान धोरणानुसार प्रमाणपत्र प्राप्त घटक (IT/ITeS Units) स्वतंत्र संशोधन व विकास प्रकल्प (IT/ITeS Units), उपकेंद्राना वीज पुरवठा (Auxiliary Supply), दूरसंचार/मोबाईल टॉवर्स इत्यादी मा. आयोगाच्या वीजदर आदेशामध्ये या घटनांना औद्योगिक वर्गवारीमध्ये समावेश केल्यामुळे महावितरण कंपनीच्या देयक प्रणालीनुसार सदर ग्राहकांना सुध्दा सवलतीचे वीजदर लागू झालेले आहेत.

सबब वरील बाबींच्या अनपंगाने प्रत्यक्ष उत्पादन न करणाऱ्या परंतु उद्योगाचा दर्जा देण्यात आलेले औद्योगिक घटकांना सन २०१६-१७ ते आजतागायत दिलेली सवलत वसूल करण्यात यावी किंवा कसे याबाबत संदर्भ क्र. ७ व ८ च्या महावितरण कंपनीच्या पत्राद्वारे शासनास विनंती करण्यात आली होती. तसेच शासनाचे याबाबत मार्गदर्शन प्राप्त होईपर्यंत सदर घटकांची सवलत स्थगित करण्यात येत आहे असेही शासनास कळविण्यात आले होते. सदर पत्र तत्पर माहितीकरीता सोबत जोडले आहे.

माहे सप्टेंबर २०२१ पासून वर उल्लेखित उत्पादन न करणाऱ्या घटकांना देण्यात येणारी वीजदर सवलत स्थगित केलेली होती. तसेच शासनाचे मार्गदर्शन प्राप्त न झाल्यामुळे माहे एप्रिल २०१६ पासून सदर उच्चदाब व लघुदाब उत्पादन न करणाऱ्या औद्योगिक घटनांना देण्यात आलेली विदर्भ-मराठवाडा सवलतीची वसूली रु. ९३.१३ कोटी माहे जुलै-२०१३ च्या देयकामध्ये खालीलप्रमाणे लावण्यात आलेली आहे. "




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औद्योगिक घटक	उच्चदाब		लघुदाब		एकूण	
	ग्राहक संख्या	सबसिडी (रु. कोटी)	ग्राहक संख्या	सबसिडी (रु. कोटी)	ग्राहक संख्या	सबसिडी (रु. कोटी)
दूरसंचार / मोबाईल टॉवर्स (Telecommunication Towers)	१६	०.३१	१६६५६	५०.९६	१६६७२	५१.२७
राज्य शासनाच्या माहिती व तंत्रज्ञान धोरणानुसार प्रमाणपत्र प्राप्त घटक (IT/ITeS Units)	२९	२०.१२	९	०.०१	३८	२०.१३
वीज निर्मितीकरीता स्टार्ट-अप पॉवर प्लांट	१८८	१०.४०	०	०	१८८	१०.४०
सांडपाणी प्रक्रिया सयंत्र	२९	८.३३	०	०	२९	८.३३
उपकेंद्राना वीज पुरवठा (Auxiliary Supply)	२१	१.८३	५५	०.०४	७६	१.४७
सामान्य उद्योगासह - प्रशासकीय कार्यालय, उपहारगृह, स्पोर्ट क्लब, हेल्थ क्लब, व्यायामशाळा, जलतरण तलाव, लिफ्ट, पाण्याचे पंप, रस्त्यावरील दिवे आणि संशोधन व विकास घटक (R & D) इत्यादी	०	०	७८२	०.७५	७८२	०.७५
स्वतंत्र संशोधन व विकास प्रकल्प (R & D Center) जे कोणत्याही इतर वर्गवारीमध्ये समाविष्ट नाही.	७	०.४६	०	०	७	०.४६
व्यावसायिक शोरूम	०	०	१६९	०.२२	१६९	०.२२
लघुदाब निवासी घरे (अपार्टमेंट चाल)	०	०	२२२	०.०९	२२२	०.०९
धोबी / लॉन्ड्री	०	०	६४	०.०१	६४	०.०१
एकूण	२९०	४१.४५	१७९५७	५२.०८	१८२४७	९३.१३

- (ix) The Dy. Secretary of Industry, Energy, and Labour Department, Government of Maharashtra vide his letter dated 28/11/2023 directed MSEDCL that the subsidy should not be given to Industrial consumers who are not involved in manufacturing activities. The relevant portion of this letter in Marathi is as follows:-


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"१) सदर पत्रात नमूद केलेल्या दूरसंचार / मोबाईल टावर्स, धोबी / लान्डी इत्यादी घटकांना वीज नियामक आयोग यांनी औद्योगिक वर्गवारीमध्ये समावेश केल्यामुळे महावितरण कंपनीच्या देयक प्रणालीनुसार सवलतीचे वीजदर लागू झालेले आहेत. परंतु शासन निर्णयानुसार विदर्भ, मराठवाडा, उत्तर महाराष्ट्र, डी व डी+ क्षेत्रातील उद्योगांना चालना मिळण्याकरीता व या विभागामध्ये सध्या कार्यरत असलेले उद्योग सुरू रहावेत तसेच अधिकाधिक नवीन उद्योग यावेत व या विभागामध्ये उद्योग क्षेत्राचा विकास जलद गतीने होण्यासाठी वीजदरात सवलत देण्याचा निर्णय शासनाने घेतला होता. शासनाचा निधी योजनेचा योग्य हेतू साध्य करण्यासाठी वापरणे उचित असल्यामुळे सदर नमूद मोबाईल टावर्स / औद्योगिक घटक उत्पादन न करणा-या घटकांना वीज दर सवलत देण्यात येऊ नये असे अभिप्रेत आहे."

3. Accordingly, MSEDCL proceeded to recover the subsidy amount of Rs. 8.33 crore from 29 CETPs across the state. This decision was upheld by the Forum. Aggrieved by the order of the Forum, the Appellant has filed this representation. An e-hearing was held on 3rd October 2024 through video conferencing. Both the parties were heard at length. The Appellant's submissions and arguments are as below. *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' where needed.]*

(i) The Appellant is a 11 KV HT Consumer (No. 250389051600) from 22/04/2011. The details of consumer number, address, sanctioned load, etc. are tabulated as below:


Table 1:

Name of Consumer	Consumer No.	Address on Bill	San. Load / Contract Demand	Date of Supply	Purpose	Debit bill adjustment towards recovery of wrong subsidy (Rs.)	Assessment Period
Ichalkaranji Textile Development Cluster Ltd.	250389051600	S. No.610/A Ichalkaranji, Tal Hatkangale Dist Kolhapur	1440 KW/ 900 KVA	22/04/2011	common effluent treatment plant (CETP)	44,29,922/- in July 2023	July 2016 to Oct. 2021 (5 years, 3 months)


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- (ii) The said CETP started functioning practically from 06/08/2012 under the management of Ichalkaranji Textile Development Cluster Ltd., which is doing operation and maintenance of this plant for the last 11 years. The cleaned / processed water to the tune of 90 lakhs units per day is released and used for agricultural purpose. The Appellant is regular in payment of the electric bills.
- (iii) The Respondent has made a debit bill adjustment of Rs. 44,29,922/- in the bill of July 2023 (The copy of this bill adjustment was given on 03/08/2023) towards recovery of “wrong” subsidy. The Appellant by its letter dated 10/08/2023 informed that they did not receive any subsidy, and hence the bill of July 2023 be revised. The Respondent by its letter dated 25/08/2023 informed that they have given D + subsidy of Govt. of Maharashtra for the period from July 2016 to Oct. 2021. *[Note: The subsidy was given to the consumers, including the Appellant, in the form of concessional tariff. This amount was expected to be reimbursed / paid to MSEDCL by the state government.]*
- (iv) The Respondent issued illegal disconnection notices on 18/08/2023, 22/09/2023 and 20/10/2023 for payment of this Debit bill adjustment towards recovery of wrong subsidy of Rs. 44,29,922/- for 5 years and 3 months. These notices violate Section 56 (1) of the Electricity Act, 2003 (the Act).
- (v) The Appellant requested to provide Consumer Personal Ledger (CPL) for the period from April 2016 to Dec. 2023. The same was received in due course.
- (vi) The Appellant never demanded any subsidy from the Respondent. However, the Appellant claimed that the subsidy given (in the form of lower tariff) was correctly given as per GoM Policy to encourage the setting up of industries in the less developed areas of Marathwada, Vidharbha , D and D+ areas of Maharashtra. The Appellant is eligible for the said subsidy, being a common sewage treatment plant of 67 textile manufacturing units.
- (vii) As per the request of the Appellant, the Respondent submitted detailed monthly assessment by its email dated 04/10/2023. There was a round of discussions for the


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recovery bill of Rs. 44,29,922/-; however, no solution was arrived at. The Appellant filed a grievance application in the Forum on 25/10/2023. The Forum by its order dated 29/05/2024 rejected the grievance application. The forum failed to understand that the Appellant's unit is nothing but a manufacturing industrial unit, and that retrospective recovery is illegal as per various orders/judgements in existence.

(viii) The Appellant emphasizes its grievance on three grounds as below:

A. CETP as Manufacturing Activity:


(ix) The CETP is a treatment plant used for treating harmful wastewater from **multiple manufacturing Textile industries**, and is nothing but a **manufacturing unit** where polluted water is the intake and processed neat and clean water is the output, used for the purpose of agriculture. The processes carried out for treating wastewater are kept on record. This type of common wastewater treatment plant has several benefits for industrial users, including low operating costs and collective treatment. It can be built on existing land and handle the highly complex industrial waste.

B. Retrospective recovery is illegal:

(x) The Appellant is a small-scale industry running from 06/01/2011. It has put on record the copy of "Udyam Registration Certificate" of Ministry of Micro, Small and Medium Enterprises of Government of India for the year 2021-22, 2022-23 and 2023-24 of being a small-scale industry.

(xi) The Appellant referred to the order dated 07.08.2014 of Appellate Tribunal for Electricity (ATE) in Case No. 131 of 2013, wherein it is stated that tariff change is permissible only from the date of detection of error in tariff classification.

"The State Commission has consistently maintained in the various orders dated 09.01.2008 and 08.10.2009 in case of similar units carrying out filling and packing of oil that they would fall under LT VII (A) – commercial category and that the arrears for difference in tariff could be recovered from the date of detection of the error."


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In this case, the so-called error was detected around September 2023 {refer letter dated 05/09/2023 of MD MSEDCL to the Principal Secretary (Energy)}. As per the above decision of the ATE, no past recovery is permissible.

- (xii) The Appellant cited Judgement of Writ Petition No. 10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune. This Judgment is in respect of challenge to the order of the Electricity Ombudsman (Mumbai) withdrawing retrospective recovery. This Judgement also discussed the Judgment of the Larger Bench in W.P. No. 10764 of 2011 and other Writ Petitions of the Bombay High Court interpreting Section 56 (2) of the Act. Considering the various citations advanced in the hearing, the Appellant argued that the Respondent, in case of escaped billing, can only bill the Appellant prospectively. The Appellant also cited a Review Petition (S.T.) No. 94709 (RSPT) of 2020 in W.P. No. 10536 of 2019 dated 09.06.2020. The High Court held that


“ 6. Thus, no ground for review is made out. Review petition is devoid of merit and is accordingly dismissed.”

The Supreme Court in Petition for Special Leave to Appeal Nos. 1952-1953 /2021 arising out of impugned final judgment of Writ Petition No. 10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune, also dismissed the special leave petition.

- (xiii) The Appellant referred to the order of MERC dated 13/05/2016 in Case of 42 of 2015 in the matter of Petition of the Seafood Exporters Association of India. The Commission observed that -

“16. As far as retrospective application of a different tariff category is concerned, the Commission’ ruling in its order dated 11 February, 2003 in Case No. 24 of 2001, which is relevant in this case, was as follow:

“No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have


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been pointed out by the Auditor. Any reclassification must follow a definite process..... and the recovery, if any, would be prospective only The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. ”.


- (xiv) The Respondent has an overall limitation of two years for retrospective recovery in cases of deficiency in service as per Section 56(2) of the Act. The Act is reproduced as below:

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. The Court has allowed 24 months’ recovery retrospectively in cases of mistake or oversight.

- (xv) The Appellant referred to the order of the Electricity Ombudsman (Nagpur) dated 19/06/2023 in case of Pannageshwar Sugar Mills Ltd. V/s MSEDCL Latur Circle in the matter of wrong application of multiplying factor. The recovery Claim was for 12 years, however, it was allowed only for **three years** as per limitation Act considering escaped billing.

C. Unlawful Notices of Disconnection as per Section 56 (1) of the Electricity Act, 2003:


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- (xvi) The Respondent billed the consumer with concessional power tariff. All of a sudden, the Respondent issued Debit bill adjustment of Rs. 44,29,922/- in July 2023 towards recovery of wrong subsidy. The Appellant made various correspondences with the Respondent regarding unlawfulness of this retrospective recovery. Instead of attending to the important points which the Appellant raised, the Respondent started threatening disconnection. This is totally illegal. The relevant portion of 56 (1) of the Act as below:

Section 56. (Disconnection of supply in default of payment): --

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:


Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee

- (xvii) In view of the above, the Appellant prays that

(i) The Appellant be declared as an Industrial manufacturing unit, OR



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- (ii) The Appellant be billed retrospectively for two years prior to issue of the bill in August 2023, considering deficiency of service, or
- (iii) The Appellant be billed as per Limitation Act for three years prior to issue of the bill in August 2023, considering escaped billing.
- (iv) Debit bill adjustment towards recovery of wrong subsidy be revised without any interest and delayed payment charges, and with 15 installments without any interest and DPC.


4. The Respondent filed a reply by its letter dated 23/08/2024. Its submissions and arguments are as below.

- (i) The Appellant is an industrial consumer from 22/04/2011, with details as charted in Table 1. The GoM vide Government Resolutions dated 29/06/2016, 24/03/2017, 23/11/2017, 06/02/2019, and 08/03/2019 declared some tariff concession to Industries in Vidarbha, Marathwada, North Maharashtra, D and D+ areas.
- (ii) By mistake this subsidy or concessional tariff was given to 'non-manufacturing' industries also. Hence this needed to be recovered. Accordingly, the Respondent issued a debit bill adjustment of Rs. 44,29,922/- in bill of July 2023 and informed the Appellant vide letter dated 03/08/2023 towards recovery of wrong subsidy paid. The Respondent by its letter dated 25/08/2023 clarified that they have given D + wrong subsidy for the period from July 2016 to Oct. 2021. The Appellant contested this and did not pay any amount partly or fully.
- (iii) The Respondent issued disconnection notices on 18/08/2023, 22/09/2023 and 20/10/2023 for payment of these outstanding dues as per Section 56 (1) of the Act. However, the supply of the Appellant was not disconnected.
- (iv) The required CPL for the period from April 2016 to Dec. 2023 was provided immediately to the Appellant as per their request. The Respondent also sent a detailed monthly assessment sheet by its e-mail dated 04/10/2023.


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- (v) The Appellant filed a grievance application in the Forum on 25/10/2023. The Forum by its order dated 29/05/2024 rightly rejected the grievance application and held that the consumer shall approach the GoM, observing that the Forum has no jurisdiction in respect of recovery of wrong subsidy. Therefore, the present appeal is also liable to be dismissed. The Appellant intends to challenge a policy decision of the GoM through this grievance, which does not fall in the ambit of 'Grievance' as contemplated in the CGRF & EO Regulations 2020.
- (vi) As indicated in the preamble, the GoM has clarified the issue by intimating the that concessional rates could not be given to mobile towers/ industrial units which do not carry out any actual manufacturing activity. Therefore, this consumer is not eligible to get any subsidy from the GoM.
- (vii) The case laws submitted by the Appellant are not applicable to the facts of the present case. The present case relates to recovery of wrong subsidy granted to a consumer, and not to retrospective recovery of tariff difference.
- (viii) The Industrial Disputes Act, 1947 defines an "industry" as follows.
Sec. 2 (j) of the Industrial Disputes Act, 1947 defines 'Industry' as any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen".
- (ix) Government of Maharashtra vide its Notification No. Saproyo-2018/Case No.-153/Energy-1 dated 01/08/2019, has declared waiver of Electricity Duty for manufacturing industrial units in Vidarbha and Marathwada Division for the period from 01/04/2019 to 31/03/2024. In the said notification, the Government has explained as follows regarding the exemption to manufacturing units.
Now, therefore, in exercise of the powers conferred by section 4 of the Maharashtra Electricity Duty Act, 2016 (XXVI of 2016), the Government of Maharashtra hereby exempts the consumption of energy in respect of any existing


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industrial undertaking which has begun to manufacture or produce articles on or before 31st March 2019 and in respect of any new industrial undertaking which begins to manufacture or produce articles for the first time on or after 1st of April, 2019 from the date on which such industrial undertaking begins to manufacture or produce article in the districts of Buldhana, Akola, Vasim, Amravati, Yavatmal, Wardha, Nagpur, Bhandara, Gondiya, Chandrapur, Aurangabad, Jalna, Parbhani, Beed, Nanded, Usmanabad, Latur, Gadchiroli and Hingoli in Vidarbha and Marathwada regions of the State of Maharashtra from the payment of whole of the electricity duty payable under Part F in Schedule A and Captive Power for the purpose of self use as indicated in clause (i) of Schedule B appended to the said Act for a period of five years with effect from the 1st April 2019 to 31st March 2024.

- (x) The Appellant consumes electricity for operating its Sewage Treatment Plant/ Common Effluent Treatment Plant for textile industries which is a process industry as charted in Preamble. The Appellant is covered under Industrial Tariff Category, as a Non-Manufacturing Process Industry, as per MERC tariff orders in force. However, the subsidy of Government is applicable only to eligible industrial manufacturing category consumers of Vidarbha, Marathwada, North Maharashtra, D & D+ region. The subsidy was wrongly given to the Appellant for the period of July 2016 to October 2021. Hence, the recovery of subsidy at Licensee level is equivalent to electricity duty where the GoM is the authority to decide case to case on merit.
- (xi) The Appellant was billed with this Subsidy for the period from July 2016 to Oct. 2021. The Subsidy was suspended from Nov. 2021/ Dec.2021 onward. The retrospective recovery was reviewed at the Corporate Office, and recovery of Rs.93.13 Crs. was made from the concerned non-manufacturing units.


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- (xii) The GoM is required to make a budgetary provision of a certain amount to grant subsidy to eligible consumers. Consequently, if someone gets the benefit of wrong subsidy amount mistakenly then it is the legal duty of the Appellant to refund the said subsidy. Hence MSEDCL is entitled to recover the wrong subsidy amount, to pass on the same to other eligible consumers.
- (xiii) A similar issue was raised by the Mobile Tower companies, and they challenged the debit adjustment before Hon'ble High Court Bombay by filling W.P. No.11875 of 2023, W.P. No.6691 of 2023 and W.P. No.6877 of 2023. On 21.09.2023, Hon'ble High Court In W.P No.11875 of 2023 directed the parties to explore the possibility of resolution of dispute by conducting a joint meeting of both the parties. The minutes are already highlighted in the Preamble.
- (xiv) On 28.11.2023, Dy. Secretary GoM of Maharashtra wrote to MSEDCL as mentioned in para 2 (xi). Consequently, concessional rates could not be given to mobile towers/industrial units which do not carry out actual production.
- (xv) The Appellant has alleged that Sewage Treatment Plant /Common Effluent Treatment Plant is a manufacturing activity. However MERC has provided three different tariff categories for Sewage Treatment/Common Effluent Treatment Plants. If the Sewage Treatment/Common Effluent Treatment is established in a commercial complex then commercial tariff is to be made applicable for the plant. If the Sewage Treatment/Common Effluent Treatment is owned and operated by local self-government bodies then Public Water Works (PWW) tariff will be applicable for the same. And if the Sewage Treatment/Common Effluent Treatment is to be used for industries, then Industrial tariff is made applicable. This indicates that Sewage Treatment/Common Effluent Treatment does not involve any manufacturing activity. *[Note: Actually, MERC has clarified that if a CETP caters to industries, then it is also eligible for industrial tariff. By implication, any CETP is to be categorised as per the sector which it caters to. If*


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a CETP is used for manufacturing industries (such as textiles), the CETP would also be eligible for the same tariff.]

- (xvi) The Appellant has produced the MSME certificate before the Forum which shows that the consumer does not fall in the ‘manufacturing’ category, but comes under ‘service industry’ category.
- (xvii) The present grievance is not maintainable before the Forum, since the GoM is a necessary party in the present proceeding. The GoM has an industrial policy to encourage new industries to come in the said areas and to create new employment opportunities. The govt. has granted concessional rates to manufacturing unit which carry out production. Therefore, the entertainment of the present grievance would amount to interference in the policy matter of the GoM.
- (xviii) In the light of the above facts, recovery of wrong subsidy is correct. The Respondent prays that the Representation of the Appellant be rejected.

Analysis and Ruling

5. Heard the parties and perused the documents on record. The parties argued in line with their written submissions. The Appellant is a 11 KV HT Consumer from 22/04/2011 with details as charted in Table 1. The Appellant installed 12 MLD **Common Effluent Treatment Plant for 67 textile manufacturing units**. A Memorandum of Understanding was executed on 11/02/2011 between Ichalkaranji Textile Common Effluent Treatment Plant Ltd. and the Appellant (Ichalkaranji Textile Development Cluster Ltd.) through Ichalkaranji Municipal Council, for operation and maintenance of the said CETP. The Ichalkaranji CETP is the user in this case.

6. The GoM vide Government Resolutions dated 29/06/2016, 24/03/2017, 23/11/2017, 06/02/2019, and 08/03/2019 declared specific tariff concession to Industries in Vidarbha,


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Marathwada, North Maharashtra, D and D+ areas to promote industries in these areas. The subsidy or concessional tariff was extended to the Appellant from July 2016 onwards.

7. The Respondent contended that the Govt. of Maharashtra clarified that this subsidy was applicable only for 'manufacturing' units. The Appellant is not a manufacturing unit, but a process industry for the purpose of Common Effluent Treatment Plant. The Appellant was wrongly extended the subsidy for the period from July 2016 to Oct. 2021, hence the subsidy was stopped from Nov. 2021 onwards. The Respondent issued a debit bill adjustment of Rs. 44,29,922/- in the bill of July 2023 for the period from July 2016 to Oct. 2021. The Chairman and Managing Director MSEDCL vide his letter dated 05/09/2023 informed the Principal Secretary, Industry, Energy, and Labour Department regarding retrospective recovery of subsidy. The recovery from various industries / units is charted in Para 2(viii).

8. The Appellant contended that the CETP is a treatment plant used for treating harmful wastewater from **multiple manufacturing Textile industries**, and is nothing but a **manufacturing unit** where polluted water is the intake, and processed neat and clean water is the output, used for the purpose of agriculture. The processes carried out for treating wastewater are produced in Para 2 (iii). This type of common wastewater treatment plant has several benefits for industrial users, including low operating costs and collective treatment. The Appellant is a small-scale industry running from 06/01/2011 with Udyam Registration Certificate. **The common effluent treatment plant falls under the category of manufacturing industry, and thus, is entitled to receive Government subsidy / concessional tariff.**

9. We have examined the detailed working processes of the common effluent treatment plant. This particular plant caters to about 67 textiles units which are involved in activities like bleaching, dyeing, printing, etc. Because of the use of chemicals in this process, wastewater of these textiles units contains harmful chemicals and substances, which are legally required to be cleaned up before releasing into the environment. CETP treats this wastewater through various


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processes as mentioned in the preamble. Finally, the cleaned water is released for agricultural purpose free of charge. We find that this entire process is actually a **part and parcel of the textile manufacturing units**, the only difference being that instead of each textile unit treating its waste separately and individually, the waste is being treated through one common plant. The input is wastewater, and the output is cleaned water. This is also a manufacturing process in its true sense. Therefore, we hold that the Appellant CETP is a part of the textiles manufacturing industry for the purpose of obtaining concessional tariff.

10. It is to be noted that the Government gave concessions and deliberately announced concessional tariff for the textile industries in declared zones in Maharashtra, with the purpose of encouraging these industries. The textile industries of Ichalkaranji were also intended for getting concessional tariff. As a part and parcel of the textile industries or at least of the industrial activity, the Appellant CETP is also eligible for this concessional tariff. We note that while issuing its clarification dated 28/11/2023 {see para 2 (ix)} the government has specifically mentioned only 'Mobile Towers'. So far as other units are concerned, the Government's instructions are general in nature, to the effect that "those industrial units which are not involved in manufacturing activity are not intended to get the benefit of the concessional tariff." It is implied that it is up to the MSEDCL to interpret and apply this maxim appropriately. We find that in the case of this CETP, MSEDCL did not apply this principle correctly. The CETP should be treated, at the very least, as a closely affiliated (and environmentally critical) activity of the textile units, and thus eligible for the same concessional tariff.

The MSEDCL is free to approach the government to confirm the above interpretation of its directives.

11. The Forum's order is set aside. The Respondent is directed:

- (a) to withdraw the retrospective bill of Rs. 44,29,922/- for the period of July 2016 to Oct. 2021 along with interest and delayed payment charges till date.


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- (b) Other prayers of the Appellant are rejected.
- (c) Compliance to be submitted within two months from the date of issue of this order.

12. The Representation is disposed of accordingly.

13. The secretariat of this office is directed to refund the amount of Rs.25,000/- taken as deposit to the Respondent to adjust in the Appellant's ensuing bill.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

