



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)

National Highways Authority of India

(Ministry of Road Transport and Highways, Government of India)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली - 110 075 • G-5 & 6, Sector-10, Dwarka, New Delhi-110075

दूरभाष/Phone : 91-11-25074100 / 25074200



NHAI/Policy Guidelines/ Dispute Resolution /2024 Policy Circular No.2.1.70/2024 dated 25th January, 2024

{Decision taken on E-Office File No. NHAI/CMD/SUGGESTIONS/2020 (Comp. No.42676)}

Sub: Guidelines for defending the cases, of charging tariffs equivalent to Local Municipal bodies for Street Lighting in the Projects of NHAI, before CGRF/APTEL/Courts - reg.

Clause 12.5.3 of IRC:SP:87-2019 and IRC:SP:84-2019 i.e. Manual of Specifications and Standards for Six Laning and Four Laning of Highways respectively contain provisions that Unless specified otherwise in Schedule 'C' of the Concession Agreement and elsewhere in the Manuals, the Concessionaire shall provide lighting at specified locations of the Project Highway.

2. Further, NHAI vide circular No. NHAI/CMD/Comp. No. 42676 dated 17.11.2020 (Annexure-1) pointed out that in many public funded projects, NHAI operates and pays energy (electricity) charges for street lighting, high masts etc. and many times power distribution Companies (State Discoms) levy these energy charges by putting NHAI Projects under the category 'Large Projects - Private Infrastructure' with very high tariffs. However, as these being public funded projects and street lighting being primarily for the benefit of the local users, consumer category should be with tariffs equivalent for the local Municipal bodies, Gram Panchayats etc., as applicable as street lights are discharging nothing but a municipal function only. In view of this, all ROs of NHAI were requested vide Circular dated 17.11.2020 to take up the matter with respective Electricity Departments of the State Governments for charging tariffs equivalent to local municipal bodies / Gram Panchayats for street lighting for the projects of NHAI.

3. It is to further inform that in some cases Consumer Grievance Redressal Forum (CGRF), MSEDCL Nagpur; Electricity Ombudsman Nagpur and High Court Bombay, Nagpur Branch have passed orders classifying the tariff category of the connection from LT-II Non Residential/ Commercial to LT-VI Street Light Category. A copy of these orders is attached herewith for kind reference:

- (i) Order dated 23.05.2022 of CGRF (Nagpur) in Case No. 25/2022 (Annexure-2) and similar orders dated 20.05.2022 in Case No. 21-24/2022 and Case No. 26/2022 dated 23.05.2022
- (ii) Order dated 27.05.2022 of CGRF (Amravati) in Case No. 12-24/2022(Annexure-3)
- (iii) Order dated 05.01.2023 of Electricity Ombudsman, Nagpur in Representation No. 44/2022 (Annexure-4) and similar orders passed on 21.03.2023 for representation Nos. 15-24 of 2023.
- (iv) Order dated 23.10.2023 of Hon'ble Bombay High Court, Nagpur in Writ Petition No. 7504 of 2022 (Annexure-5) and similar orders dated 23.10.2023 for Writ Petition Nos. 7505-7516 of 2022.

Contd...2/-

4. It has been noticed that in some cases Contractors have procured the electricity connections in the name of NHAI as the consumer. Further, PIUs have authorized the Contractors to represent, appear, participate and carry out the proceedings before Electricity Consumer Grievance Redressal Forum/ APTEL/ Courts and other quasi-judicial Authorities on behalf of NHAI. To avoid such practices and issues arising out of that, the following has been decided:

- (i) The Electricity Connections for Street Lighting are to be obtained under the name of respective PIU of NHAI. However, the Contractor/ Concessionaire shall bear all costs of procurement, installation, running and operation cost of all lighting and energy consumption as per the applicable provisions of the Contract/ Concession Agreement.
- (ii) In case, the matter is required to be defended by NHAI before any CGRF/APTEL/ Court/ Quasi-Judicial Authority etc., the respective PIU will defend the case on behalf of NHAI after seeking approval of affidavit from concerned RO.

5. This issues with the approval of Competent Authority.

Encl.: As stated above


(Sanjay Kumar Patel)
General Manager (Coord.)

To:

All Officers of NHAI HQ/ ROs/ PIUs/ CMUs/ Site Offices

Copy to:

1. Hindi Division for translation in Hindi.
2. Library for hosting the circular on library site.
3. Web Admin for circulation



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075

G-5 & 6, Sector-10, Dwarka, New Delhi-110075

Annexure - 1

दूरभाष / Phone : 91-11-25074100/25074200

फैक्स / Fax : 91-11-25093507 / 25093514

NHAI/CMD/Comp. No. 42676

Date: 17.11.2020

Circular

Sub.: Taking up the matter with Electricity Departments of various State Governments for charging tariffs equivalent to local municipal bodies for street lighting in projects by NHAI.

In many Public Funded projects, NHAI operates and pays energy (electricity) charges for street lighting, high masts etc. It has been observed that many times power distribution companies (State Discoms) levy these energy charges by putting NHAI projects under the category 'Large Project - Private infrastructure' with very high tariffs. However, these being public funded projects and street lighting being primarily for the benefit of the local users, consumer category should be with tariffs equivalent for the local Municipal bodies, Gram Panchayats etc., as applicable as street lights are discharging nothing but a municipal function only. Moreover NHAI should be given benefit for reduced demand for Automatic Timer for on/off as available in tariffs.

2. In view of above, all ROs are requested to take up the matter with respective Electricity Departments of the State Governments for charging tariffs equivalent to local municipal bodies/Gram Panchayats for street lighting for the projects of NHAI.

3. This issues with the approval of Competent Authority.


(Vishal Gupta)
CGM (CMD)

To

All ROs

Copy to:

1. PS to Chairman, NHAI
2. PS to All Members/CVO, NHAI
3. Web Admin - for circulation to all NHAI officers

ORDER

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM MSEDCL
NAGPUR**

CGRF (Nagpur) Case No.25/2022

**Filed on 31/03/2022
Decided on 23/05/2022**

**M/s GMDBL Wardha Butibori Project,
Ch.No.523, N.H.361, Butibori, Nagpur,
Dist. Nagpur.**

.....Applicant.

//VERSUS//

**Nodal Officer,
The Executive Engineer,
M.S.E.D.C.L., CCO&M Division,
Butibori, Distt. Nagpur.**

.....Non-Applicant.

Applicant Represented by: Shri Mukesh Deshmukh

**Non-applicant represented by: Shri V.N.Gawate,
Dy. Exe.Engr.,CCO&M Dn.
Butibori, MSEDCL,Dist. Nagpur.**

**Coram Present : 1) Shri A.A.Sayeed, Chairperson
2) Dr. Kalpana Tiwari-Upadhyay, Member (CPO)
3) Shri N.R.Pardhi, Member-Secretary**

ORDER

(Dated 23/05/2022)

The applicant has approached this Forum under Clause 7 of Maharashtra State Electricity Commission (Consumer Grievance Redressal Forum And Electricity Ombudsman) Regulation-2021 for redressal of his grievance in respect of classification of tariff.

2. The applicant is LT Commercial consumer bearing consumer No. 410560970394 situated at Ch. No. 523, N. H. 361, Butibori, Dist.Nagpur.

3. The applicant has applied for electricity connection for the operation of Street Lights on National Highway. The Non applicant approved the application under LT-II category. It is submitted the electricity is use for Street Lights. However, the Non applicant issued connection under commercial category. In the applicant therefore requested for reclassification of tariff from LT-II non residential category to LT-VI Street Lights category.

4. The Non applicant filed reply dtd. 18/04/2022. It is submitted that the applicant applied for new connection in commercial category. It is submitted that the connection was issued in the name of GMDBL Wardha Butibori Project, and not in the name of authorities specified in the tariff order in case No. 322/2019. The primary activity of the consumer is construction. The applicant has taken the contract of construction of road, bridges and providing of Street Lights is one of activities in their contract, which is part and parcel of its primary activity. The applicant company has to do maintenance work of the Street Light. Therefore, it is commercial activities and tariff category LT-VI Street Lights is not applicable to it.

5. The applicant filed rejoinder wherein it is submitted that the as per MERC Order in case No. 322/2019 LT-VI Street Light category is applicable as the Street Lights are erected on the Highway for public at large free of charge. The classification of consumer category is based on tariff order passed by MERC from time to time. The electricity is use for the purpose of Street Light on the NH within the limits of villages and towns. Therefore, requested for grant of suitable relief.

6. We have heard the consumer and his representative and the Nodal Officer. The representative of the consumer has placed on record the

Circular dtd. 17/11/2020 issued by NH Authority of India. According to which, it was advice to take of the matter with electricity department of various State Govt. for charging tariff equivalent local municipal bodies for Street Lights in the project by NHAI. The applicant has also place on record authorization issued by DBL Wardha Butibori Highway Pvt.Ltd. in favor of its Director Bharat Singh. The provisional certificate of completion of construction of Highway it also placed on record. As per provision certificate the Highway has been declared open, fit for entry in to operation on 20/11/2019.

7. As per tariff order LT-VI Street Lights applicability:

This tariff category is applicable for the electricity used for lighting of public streets / thoroughfares, which are open for use by the general public, at Low / Medium Voltage, and also at High Voltage.

Street Lights in residential complexes, commercial complexes, industrial premises etc. will be billed at the tariff of the respective applicable categories.

- a) Lighting in Public Gardens (i.e. which are open to the general public free of charge)"
- b) Traffic signals and Traffic Islands;
- c) Public Sanitary Conveniences;
- d) Public Water Fountains; and
- e) Such other public places open to the general public free of charge.

8. The electricity is used for illumination of Highway within the limits of villages and towns. Merely because the applicant is not a municipal council or gram panchayat it will not disentitle it to avail the tariff category LT-VI street lights. What is important is to see the purpose for which electricity is used rather than who is using the

electricity. The applicant is not charging the public for lighting of the streets. We are therefore of the opinion that tariff category LT-VI Street Lights is applicable to the applicant.

We therefore pass following order;

ORDER

1. The grievance application is hereby allowed.
2. The Non applicant is hereby directed to reclassify the tariff category of the connection from LT-II non residential / commercial to LT-VI Street Light category.
3. The Non applicant is hereby directed to issue revised bills accordingly.

Date:- 23/05/2022

Sd/-	Sd/-	Sd/-
(N.R.Pardhi)	(Dr. Kalpana Tiwari-Upadhyay)	(A.A.Sayeed)
Member-Secretary	Member (CPO)	Chairperson

**CONSUMER GRIEVANCE REDRESSAL FORUM
AMRAVATI ZONE, AMRAVATI**

'Vidyut Bhavan', Shivaji Nagar, Amravati: 444603, Tel. No. 0721 2551158

Phone (O)0721-2663640, (P)0721-2663655, Fax 0721-26616

Website- www.mahadiscom.in/email_eecgrfamtz@mahadiscom.in/eecgrfamtz@gmail.com

Dt: 27.05.2022

ORDER

Representation No 12/2022 Dt. 22.03.2022

**M/s Dilip Buildcon
Mayur Layout Yavatmal
Con No. 374190008174**

Complainant

..Vs..

**Executive Engineer,
MSEDCL, Yavatmal Circle**

..Respondent.

Representation No 13/2022 Dt. 22.03.2022

**GM DBL
National Highway, Bhari, Yavatmal
Con No. 378310009469**

Complainant

..Vs..

**Executive Engineer,
MSEDCL, Yavatmal Circle**

..Respondent.

Representation No 14/2022 Dt. 22.03.2022

**General Manager, DBL
Ganamgaon Highway, Kalamb, Yavatmal
Con No. 379690003669**

Complainant

..Vs..

**Executive Engineer,
MSEDCL, Yavatmal Circle**

..Respondent.

Representation No 15/2022 Dt. 22.03.2022

DBL Mahagaon, Harjuna
National Highway, Yavatmal
Con No. 371600005624

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 16/2022 Dt. 22.03.2022

DBL Mahagaon, Kinhi
National Highway, Yavatmal
Con No. 378930007571

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 17/2022 Dt. 22.03.2022

DBL Mahagaon, Mhasola
National Highway, Yavatmal
Con No. 371600005403

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 18/2022 Dt. 22.03.2022

General Manager, DBL,
Kalamb, Yavatmal
Con No. 377993041463

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 19/2022 Dt. 22.03.2022

General Manager, DBL,
National Highway, Khutala,
Tq-Kalamb, Yavatmal
Con No. 380210001210

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 20/2022 Dt. 22.03.2022

General Manager, DBL,
Ashoka Wine Bar,
Tq-Kalamb, Yavatmal
Con No. 377993041455

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 21/2022 Dt. 22.03.2022

GM, DBL, Chaparda RHS
Tq-Kalamb, Yavatmal
Con No. 379260002791

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 22/2022 Dt. 22.03.2022

GM, DBL, Truck Lay Mayur Dhaba,
Tq-Kalamb, Yavatmal
Con No. 377997707652

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 23/2022 Dt. 22.03.2022

GM, DBL, Chaparda RHS,
Tq-Kalamb, Yavatmal
Con No. 379260002499

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Representation No 24/2022 Dt. 24.03.2022

DBL, Ghoti 1, HN-361,
Ghoti, Tq-Kalamb, Yavatmal
Con No. 378150003931

Complainant

..Vs..

Executive Engineer,
MSEDCL, Yavatmal Circle

..Respondent.

Date of Hearing 29.04.2022

Date of Order 27.05.2022

The applicant M/s DBL Infra, Yeotmal to Wardha Road project, filed the grievance with the Forum against the reclassification of its connections under LT-VI category to LT-II category. The facts of these representation are similar, the points involved in them are similar and hence the forum propose to decide them by common order.

The details of the grievance in brief is as below-

- 1) The applicant is the concessionaire, incorporated by Dilip Buildcon Ltd, Solely for the purpose of executing the concession agreement with NHAI dt. 09.06.2017 and obligations of the works provided therein, i.e, four-laning of Buti-bori to Tuljapur road on hybrid annuity mode.
- 2) The representation is filed by it to challenge the upward revision of electricity bills of the connection provided for supply of electricity to the street lights of the said project.

- 3) The applicant has secured electricity connections for installation of street Lights on the said road, the construction of which was awarded to it by National Highway Authority of India, to be constructed on HAM mode.
- 4) The above mentioned connections are secured for lighting of street-lights on the project in accordance with the Maharashtra Tariff order FY 2018-19 and FY 2020-21.
- 5) The applicant informed the purpose for which it was securing the connection and the authority admitted by conduct of grant under LT-VI(A) category, that the connections were for the purpose of use as street lights on the National Highway Project.
- 6) Thereafter the applicant was issued with the bills by the authority from time to time under LT-VI(A) category and the applicant duly paid the said bills without delay or fault from the sanctioned date.
- 7) To the Uttar shock and dismay of the applicant, the authority, out of their own whims arbitrarily reclassified the category of the above connections to commercial category by issuing notice dt. 24.02.2022 and raising a demand towards tariff difference from date of connection without intimating any reason or calculation in this regard.
- 8) Along with the notice dt. 24.02.2022, the authority revised the electricity bills of the above connections for the M/o January 2022 which was already issued to the applicant without reclassification of the category. The reclassification of the category of the above mentioned connections caused considerable hike in charges levied on the applicant consumer, besides being inherently wrong. The reclassification from LT-VI(A) category to LT-II(B) category is fundamentally flawed on facts and bad in law.
- 9) Being aggrieved by such reclassification, the applicant submitted its grievance before Internal grievance Redressal Cell, Yeotmal on 14.03.2022 but no redressal till date has been provided by the cell to the applicant. Hence filing this application before the Addressee Authority in accordance to Regulation 6.4 of the MERC (CGRF and Ombudsman.) Regulations 2006 to challenge the reclassification of the connections of the applicant, being Unilateral and heavy handed exercise of administrative action by the authority and is liable to be withdrawn on following grounds.
 - a) It is submitted that the action of the reclassification of connection by the assessing authority is based on erroneous interpretation of the clause 4.4.1 and clause 14 of MERC (Electricity Supply Code and other conditions of supply) Regulations 2005 as amended on 2021. The action is based on fundamental misassumption that the purpose/ intended use of supply is commercial. It is clarified that the street lights installed are part of the project facilities. As defined in the EPC agreement, project facilities include provision of street lights under clause 2.1 and schedule C of the Agreement.

It is submitted that the NHAI exercises proprietary and controlling rights over the project and its facilities, including street lights, as such are

solely vested in the NHAI. Therefore applicant is merely a concessionaire in respect of the project and its facilities. The applicant do not exercise any proprietary, operational and commercial control over the project facilities.

b) According to the terms and conditions of the EPC agreement the applicant is under an obligation to transfer the project including facilities to NHAI. The project facilities include street lights, Toll Plazas, road Side Furniture, Pedestrian facilities, landscaping, tree plantation etc.

It is submitted that the said project entered into provisional commercial operation and has already entered into defect liability period, meaning thereby that the applicant being the contractor has handed over the project facilities to the NHAI for operation of the Toll Plaza & is liable only towards maintenance of the project and not for collection of user fee from the users of the National Highway.

c) The applicant quoted the relevant section of the Tariff order of the year 2019-2020 applicable from 2020-2021 to 2024-25 from where the classification of categories of connection obtained by the applicant vis-à-vis. Commercial as well as street light category is purported to be emanating. The applicant in its representation mentioned the applicability of LT-II-Non-residential or commercial LT-II(A) 0-20 KW tariff category as well as the applicability of LT-VI-LT street lights tariff category to various class of consumers.

10) It is important to note that the commercial tariff category is contemplated to be applicable for electricity used at low/medium voltage in non-residential/ non industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking and washing/ cleaning, entertainment/ leisure and water pumping. The tariff order further specifies the exhaustive list of categories wherein the said category shall be applicable, which nowhere enumerates "street lights erected for public usage" etc. The connections obtained by applicant are not used for any commercial purpose or for supply to any commercial establishments, hence cannot be categorized under commercial category.

11) The applicant referred the circular of NHAI dt 17.11.2020, wherein it is clearly stated that the street lights for all the projects vested and under control of NHAI, must be categorized with the tariff category equivalent for the local municipal bodies and Gram Panchayat. The street lights in the present matter also render the function of municipal category, as there was no revenue generated from such usage of street lights, rather the connection is for services only for the general public usage.

12) The authority has categorized the connection with LT-VI category from the commencement itself, the electricity bills generated were also raised in the same category as LT-VI(A), but the category has been revised from LT-VI (A) to LT-II without any prior intimation to the applicant. This shows

lapses, arbitrariness and unreasonableness of the authority to levy the charges without affording any opportunity for fair hearing before reclassification of the tariff category.

13) According to the principle of law of estoppel, the assessing authority is estopped from reclassification of the tariff category since they have already charged the applicant with LT-VI(A) tariff category and now the authority is estopped from reclassifying the said connections as commercial i.e LT-II category.

14) The applicant has never deferred in any of the payments on the cited connections provided by the licensee, however without any reasonable cause and calculations, the authority revised the category of the connections obtained by the applicant.

15) The assessing authority, without any reasonable cause and legal backing has revised the tariff for all the connections which is outcome of administrative irrationality without affording any opportunity of fair hearing to the applicant. It is assertively submitted that the action of reclassification of the connection is based on erroneous and misplaced reading/ interpretation of the clause LT II commercial category of Tariff order. The action of the assessing authority is driven by the fundamental misassumption that the purpose/intended use of supply connections is commercial.

16) It is further submitted that the applicant is concessionaire of the said project and is under obligation to transfer the project including project facilities to NHAI. The said project has already entered into commercial operation on 02.03.2021 and the applicant has handed over the project facilities. They are liable only towards maintenance & operation of the project including street lights and not for collection of user fee from the users of National Highway. It is important that the toll collected as user fee of the National Highway cannot be related with street lights erected at the said project since the street lights have been erected at the project for the convenience of the operationalization of the Highway and not for any commercial purpose.

17) The applicant has already paid all the amounts, as raised till today to avoid unfavorable coercive action against it and requested the authority to provide the details of ground, computation and assessment of the reclassification of the bills.

18) The details of the connections are as below:

	Case No.	Consumer No.	Consumer Name	Location	Sub Divn	Location (Overbridge, Street light or toll booth ect.)
1	12	374190008174	Dilip Buildcon	Mayur layout yavatmal Change no 409 YAVATMAL YAVA MAL Parawa	YTL (R)	Overbridge and underbridge lighting
2	13	378310009469	GM DBL DBL	bhari on national highway bhari ,yavatmal YAVATMAL	YTL (R)	Bus Bay(Bus-stop) Lighting
3	14	379690003669	General Manager DBL Galamgaon	galamgaon on highway galamgaon tal.kalamb dis.yav	Kalamb	Overbridge
4	15	371600005624	D.B.L mahagaon. yavatmal project	Arjuna on national highway OVERBRIDGE ch.no.393	YTL (R)	Overbridge and underbridge lighting
5	16	378930007571	D.B.L mahagaon. yavatmal project	KINHI on national highway OVERBRIDGE ch.no.397	YTL (R)	Overbridge and underbridge lighting
6	17	371600005403	D.B.L mahagaon.yavatmal project	mhasola on national highway Bus bay ch.no.392 550	YTL (R)	Bus Bay(Bus-stop) Lighting
7	18	377993041463	General Manager DBL KALAMB CHAUK DBL	KALAMB TQ KALAMB HIGHWAY 361 kalamb Dist. Yavatmal	Kalamb	Overbridge
8	19	380210001210	General Manger DBL street light khutala	khutala ,on national highway khutala tal.kalamb	Kalamb	Overbridge
9	20	377993041455	General Manager DBL ASHOKA WINE BAR KALAMB	dabha nagpur road, NH361 dabha nagpur road tal.ka KALAMB YAVATMAL Kalamb	Kalamb	Overbridge
10	21	379260002791	GM DBL CHAPARDA RHS	CHAPARDA RHS CHAPARDA KALAMB YAVATMAL Chaparda 445401	Kalamb	truck lay-by(street light)
11	22	377997707652	GM DBL TRUCK LAY MAYUR DHABA	MAYUR DHABA KALAMB NH-361 KALAMB YAVATMAL Kalamb 445401	Kalamb	truck lay-by(street light)
12	23	379260002499	GM DBL CHAPARDA RHS	HN361 CHAPARDA TQ KALAMB DISTRICT YAVATMAL KALAMB YAVATMAL Chaparda 445401	Kalamb	truck lay-by(street light)
13	24	378150003931	DBL GHOTI 1	HN361 GHOTI TQ KALAMB DIST YAVATMAL KALAMB Ghoti 445401	Kalamb	truck lay-by(street light)

PRAYER

1. The reclassification of the tariff structures for which the connections were obtained by the Applicant be set aside as being bad in law and direct the Assessing Authority to not to classify the connections under Commercial-LTII category;
2. No retrospective operation of the reclassification of connections be undertaken by the Authority for the connections obtained by Applicant. The notice dated 16.02.2021 be withdrawn accordingly; and
3. Adjust the excess amount paid by the Applicant in lieu of the bills raised under the reclassified tariff category in the subsequent bills raised by the Authority; and
4. Grant any other relief as the Addressing Authority may deem fit and proper.

The NA MSEDCL filed the reply on 12.04.2022. According to NA MSEDCL it has provided 3 phase /1 phase connection in the name of M/s DBL, Yavatmal-Wardha Highways Pvt Ltd. These connections are checked by flying Squad, Yavatmal on dt 06.01.2022.

The existing tariff LT VI, street light is applicable for the government utility for lighting of public garden, traffic signals & traffic islands, Public water fountains, public streets, thorough fares which are open for use by the general public in

- A. Gram Panchayat, and A,B,C class municipal councils
- B. Municipal Corporation area.

It is clearly mentioned in para-II, that the street lights in residential complex, Industrial premises etc. will be billed at the tariff of the respective applicable categories.

The road constructed by M/s DBL is being utilized by the vehicles on payment of charges at Toll Plaza at the respective places. This is purely commercial activity as the general public has to pay the charges by way of Toll Tax at the respective Toll Plaza.

On inspection of these consumers, the Additional Executive Engineer, Flying squad submitted the report for change of tariff category from LT-VI street light to LT-II commercial. The report submitted by flying squad is as per Tariff order No. CE/Comm/Tariff/MYT 20-25/9061dt 03.04.2020.

The applicant filed the grievance against reclassification of the connection from LT-VI category to LT-II category before the Internal Grievance Redressal cell, Yavatmal. It is informed to the applicant vide letter dt. 23.04.2022 that as per MERC (CGRF and EO) Regulations 2020, web based Internal

complaint Redressal system (ICRS) replaced the Internal grievance Redressal cell to file the complaint through Internal Complaint Redressal Cell.

The applicant has mentioned about the circular No. NHAI/CMD/COMP/42676 dt. 17.11.2020, as Encl 4, but copy of the same is not attached with the grievance. It is submitted that, the NHAI circular may be Central Government Circular, but tariff applicability is as per MERC tariff order/ MSEDCL tariff circulars.

The applicant in para 7.3 & 7.4, mentioned about the regular and contested payment of electricity bills. It is submitted that the reclassification of applicable tariff is as per tariff order no. 9061 dt 03.04.2020 (commercial Circular No. 323).

The Doctrine of Estoppels cannot be applicable in the reclassification of the tariff applicable on the basis of Tariff order. If a higher tariff is wrongly applied to a consumer & detected in course of time, the consumer has to apply proper tariff on lower side or rightly applicable tariff.

The activity of the consumer is purely commercial and reclassification of the tariff category from LT VI to LT II is rightly applied to the consumer as per Tariff order. It is therefore requested to dismiss the complaint of the applicant in the interest of justice.

The case was heard on 26.04.2022 Shri.Mukesh Deshmukh, on behalf of the applicant and shri. Khangar, Nodal Officer on behalf of NA attended the hearing.

The representative of the applicant argued in line with the written submission. It submitted that the applicant is concessionaire of the project i.e Yavatmal-Wardha National Highway and is under obligation to transfer the project including project facilities to National Highway Authority of India. The project has already entered into commercial operation on 02.03.2021 and the applicant has handed over the project including street-lights. It is liable only towards operation and maintenance of the project and not for collection of user fee from the users of National Highway. Hence the connections cannot be classified as commercial category as no revenue is generated from it. No commercial building is in the vicinity of said connections and the street lights are provided for public purpose. It has carried out the work on Hybrid annuity mode (HAM) and not authorized to collect the Toll from the vehicles. It grabbed attention of the forum towards the NHAI circular bearing no.42676 dt 17.11.2020, wherein the regional officers are directed to take up the matter regarding tariff charged for Street Lights. It argued that the central govt rule is applicable to State Government and requested to retain the LT VI tariff for its connections and refund the difference.

NA MSEDCL submitted that the street lights are not in Gram Panchayat/Municipal Council area and hence LT-VI tariff is not applicable. It is a commercial activity & the tariff is changed as per Inspection report submitted by Add. Executive Engineer, Flying Squad, Yavatmal. As per the order of Hon.

Supreme Court of India, in Civil Applied No. 7232 of 2009, order dt 05.10.2021, licensee is entitled to raise a demand if it is discovered that the consumer has been short billed. The directions of NHAI vide circular dt. 17.11.2020 cannot be implemented unless necessary changes are made in tariff order by MERC NA, MSEDCL pointed out during course of hearing that the applicant has filed the Writ-Petition with Hon. High Court of Judicature at Bombay, Nagpur Bench and hence grievance is liable for rejection. When the forum enquired with the applicant about the Subjudiced matter, if any, it submitted the Court's order of direction dt. 21.04.2022. The Forum perused the order in W.P. No. 2020 of 2022, wherein Hon. Court has directed-

"We also make it clear that since this Writ Petition has been entertained in view of the apprehension of the petitioner that the supply could be disconnected even before April 26,2022, the CGRF shall proceed to decide the dispute before it, uninfluenced by the pendency of this Writ-Petition."

Hence the Forum decided to proceed further-

The Forum directed the applicant to submit the copy of contract Agreement with NHAI, copy of LOA etc to assess its exact scope of work and various project facilities expected to be provided and maintained and whether it is entitled to recover the toll from the vehicles passing on this National Highway, on next hearing, scheduled on 09.05.2022.

The applicant submitted rejoinder dt 23.04.2022 to the reply of NA MSEDCL dt 11.04.2022, which in brief is as under

1. Inspection of the connections is carried out without any prior notice of inspection. The street lights erected on the said Highway are rendering services free of charge, therefore the said connections were obtained under Street Light category- LT-VI. But authority reclassified the category in arbitrary manner.
2. The matter regarding provision of Land on lease basis is irrelevant with the instant grievance and hence need not be reiterated here.

The applicant totally denies the contention of NA, MSEDCL that it is charging the road users for usage of National Highway as it is obligated only towards construction, operation and maintenance of National Highway. The toll fees is collected by third party agency provided by NHAI and not by the applicant.

NHAI is a central Govt agency and the work is carried out by it is for convenience of public at large and not for any commercial purpose. The street lights are serving no purpose other than municipal acts and the user fee collected is only for the purpose of compensating the government for construction, building maintenance and management of National Highway and not for any commercial/ profitable purpose. Neither the applicant nor NHAI is carrying out any trade or commerce in general for which it can be defined as commercial establishment. Moreover, the street lights are not installed on the entire stretch of the highway but certain specific places like service roads and intersection of villages and town's etc

which are open for use of local residents free of charge. The main purpose is to prevent and avoid accidents and mishappening to the general public at large.

The reclassification of the connection on the basis of circular No 323 dt 03.04.2020 is against the tariff order passed by MERC, as the LT-II category is applicable to those consumers utilizing the electricity connection for non residential commercial purpose and the LT-VI category is for electricity connection being used for lighting of Public Streets.

The authority cannot unilaterally increase the tariff of a consumer. Same can be done only after getting approval from MERC. It is the MERC which can decide as to whether the electricity connection of the applicant would fall under LT VI- street light tariff categories or under LT-II commercial Tariff. The MSEDCL has not only reclassified the category but also demanded the difference from the date of connection. Such retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of consumer as per the order passed by the Hon'ble MERC in case no. 24 of 2001.

The circular No. 42676 of NHAI dt 17.11.2020 issued by CGM (CMD) of NHAI and addressed to all Regional offices to take up the matter with respective electricity departments of the State governments for charging tariff equivalent to local municipal bodies/ Gram Panchayat for street lighting of the projects of NHAI. This circular is not only with respect to central Govt but is for the purpose of operation of the circular and categorization of street lights by the State Government utility owning agencies. Any legislation/ circular passed by central Govt. authority is applicable on state as per Ruling passed by Hon. Supreme Court in case of Project Director, Project Implementation units Vs Krishnamoorthy, 2020."

Regulation 13 of supply code concerning classification / reclassification is the primary duty of licensee. But for mistake / faults of licensee the consumer can not be burdened. If wrong tariff category has been made applicable, the licensee is not empower to recover arrears on account of difference in tariff. The consumer has no role in fixing the tariff and the authority itself having fixed the tariff, it can recover the arrears of electricity charges only from the date of inspection. Applicant cannot be held responsible for any such alleged incorrect categorization at the time of connection and hence it is unreasonable to reopen the reassessment from the date of connection.

The applicant submitted that, it is responsible for operating and maintaining the project highway including street lights, for which amount is fixed under Article 23 of the concession Agreement. Any increase in the costs and expenses would have to be incurred by the Applicant. But, ultimately, the ownership of all property and completed works is to be handed over to NHAI. The National Highway in turn is obviously for use of the Public at large. NHAI is also not collecting the toll for generating profit but to recover the cost of construction and maintenance of the highways as per Govt. Policy.

The applicant humbly prays to declare that the connections for street lights on National Highway fall under LT-VI category and the reclassification of the connections as unjustified, illogical, arbitrary and thus liable to be quashed. Also declare that the authority cannot retrospectively recover the difference in amount of tariff from the date of connection.

The NA MSEDCL, on 26.04.2022, submitted rejoinder to the applicants say dt. 23.04.2022 which is merely repetition of the original reply submitted on 12.04.2022 According to NA MSEDCL.

It has a right to check inspect, the premises and meter of the consumer and there is no need of the permission of consumer.

LT VI –Street Light tariff is applicable for the govt. utility ie for lighting of public garden, traffic signals & traffic islands, public water fountains, public street/thorough fares which are open for use by general public.

The tariff category is reclassified as per section 14 of MERC (Electricity supply code and standard of performance of Distribution licensee including power quality) Regulation 2021 and is reclassified as per use of consumer. MSEDCL has not created any tariff category other than approved by commission.

The applicant is merely contractor engaged by the NHAI authority for construction of the project and its operation and maintenance for as period of 15 years The ultimate consumer of the electricity connection is therefore NHAI. It is the responsibility of the applicant to maintain the street light as well as payment of electricity bills till operation period of the project is over.

Point No 4,5 and 6 is repetition of original reply. NA, MSEDCL requested to dismiss the complaint.

During hearing on dt. 09.05.2022, the applicant submitted application under section 151 CPC for Grant of AD interim Injunction on the reclassification of the connection from LT VI Street Light to LT II Commercial category and recovery of arrears based on reclassification of category.

As per clause 8.16 of MERC (Consumer grievance Redressal forum and Electricity ombudsman) Regulation 2020,

“The Forum shall not be bounded by the code of Civil procedure, 1908 (5 of 1908) or the Indian Evidence Act 1872 (1 of 1872) as in force from time to time”

Hence the application is liable for rejection.

The forum has perused the reply submitted by NA to above application for grant of AD interim injunction and is mere repetition of previous submission.

During hearing on 09.05.2022, the applicant submitted the documents ie copy of contract Agreement with NHAI, LOA etc as directed by the forum to assess its scope of work and the project facilities to be provided. Shri Deshmukh, on behalf of M/S DBL and Shri Khandare, Nodal officer on behalf of NA MSEDCL were present and argued in line with the written submission.

Analysis and Ruling

Heard both the parties and perused the material on record.

It is undisputed that the National Highway Authority of India and the applicant entered into concession Agreement for the purpose of four laning of Yavatmal to Wardha section of NH-361 on Hybrid Annuity Mode and maintenance thereof for a period of 15 years. The applicant is under obligation to provide street lights as project facility defined under Article 2 and schedule C of the Agreement. The street lighting is to be provided at Toll Plazas, Rest area, Truck lay bye, Bus bays and bus shelter location, grade separators & Built up areas.

The Non applicant MSEDCL released 14 nos connections in the name of M/s DBL and were billed as per LT VI- street light tariff from the date of connection. The connections were reclassified as LT-II commercial after inspection by Flying Squads and the additional demand for the tariff difference for past period was issued. The forum perused the inspection report of flying squad which mentions "The tariff to be changed from LT-VI (A) to LT-II (B) as used for National Highway Lighting", but not established the commercial use by the applicant. The NA MSEDCL without application of mind, reclassified the tariff category of all the connections with retrospective effect.

The NA MSEDCL submitted that the LT-VI tariff is applicable only to Government utility like Gram Panchayat, Municipal Council, or Corporations which is misplaced. The MYT order of MSEDCL for FY 2020-21 to FY 2024-25 specifies the applicability of LT-VI street light category as below-

This tariff category is applicable for the electricity used for lighting of Public streets/ thoroughfares which are open for use by the general Public at low / Medium voltage, and at High voltage. Street lights in residential complexes, commercial complexes, Industrial premises, etc will be billed at the tariff of the respective applicable categories.

This categories is also applicable for use of electricity / power supply at low / medium voltage or at High voltage (but not limited to) for the following purposes irrespective of **who owns, operates or maintains this facility**.

- a. Lighting in Public Gardens (which are open to general public free of charge)
- b. Tariff signals and traffic Islands.
- c. Public water fountains.
- d. Such other public places open to the general public free of charge.

The National Highway is a **Public Street** & the commercial tariff cannot be applied merely because the connection is in the name of M/s DBL. Suppose a particular NGO adopted a village in tribal area, installed the street light connection and maintains it with payment of electricity bill, commercial tariff could not be applied to it because the use is for street lights irrespective of the connection is in the name of NGO.

The NA MSEDCL reiterated that the activity of M/s DBL is commercial as it is collecting toll from the vehicles passing on the highway and hence connections are recategorised as commercial. M/s DBL has not provided the street lights on **entire stretch of the highway but certain specific places like service roads, intersection of villages & towns etc which are for use of local residents free of charge.** The forum is of the firm opinion that these street lights provided on the highway passing through villages / towns are for ease of local residents to carry out their day-to-day activities and to avoid accidents and mishappening & nothing to do with the collection of Toll. More ever M/s DBL is not entitled to collect the toll from the vehicles. MSEDCL has also clarified that all these connections are released for street light only and not for Toll Plaza and other amenities.

No doubt, MSEDCL has right to classify and reclassify a consumer into various commission approved tariff category as per clause 14 of supply code regulations 2021, but it can be categorized based on the purpose of usage of electricity. Basically application of tariff depends on the purpose for which the electricity is being used. Suppose, somebody rented the house owned by him, no doubt he is earning in terms of rent but commercial tariff could not be applied to tenant as the use of electricity is for residential purpose.

The NHAI circular dt. 17.11.2020, is simply directives to Regional officer of NHAI to take up the matter with respective electricity department of the State Government for charging of tariffs equivalent to local Municipal bodies / Gram Panchayat for street lighting of projects of NHAI.

The NA, MSEDCL relied upon the order of Hon. Supreme Court of India in Civil Appeal No 7235 of 2009, order dt 05.10.2021 in case of M/s Prem Cotex V/s Uttar Hariyana Bijlee Vitaran Nigam. The Hon.Supreme Court, in the above order, ruled that "If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is entitled to raise a demand." No doubt, the licensee is empowered to raise the demand after detection of mistake, but it should be Legitimate. Here, the applicant has disputed the additional demand on account of change in tariff category, as its purpose of usage of electricity is for street lighting.

The applicant relied upon the MERC order in case no. 24 of 2001, and placed that "No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. The forum opines that this reclassification is based on assumption of NA MSEDCL that the applicant is using the supply for commercial purpose and hence the question of retrospective recovery does not arise.

The NA, MSEDCL, misinterpreted the tariff order by co-relating the issue with collecting toll from the vehicles passing on the National Highway. The applicant is not recovering any toll. Moreover the street lights provided on stretches of the highway are for use of local residents to carryout their day-to-day activities & not for the vehicles passing on the highway. If the applicant would

have provided street lights on the complete highway it would have been said that it is for vehicles passing on the National Highway. But this is not the case.

Dissenting opinion of Member Secretary (Shri B.D Augad)

As a Member Secretary of Forum I am of the opinion that as the connection for the lights on the National High ways as mentioned in Applicant complaint, are in the name of private agency i.e. Dilip Buildcon Limited. Use of these Highway lights are not for the people to carry out their daily works but mainly for the vehicles passing through the Highways as these vehicles are paying the charges at the Toll plaza. Hence these connections should not be categorized in LT VI: LT – Street Light.

As per Applicability of Tariff under MERC MYT FY 2020-21 to FY 2024-25 LT VI: LT – Street Light

Applicability:

This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at Low / Medium Voltage, and at High Voltage.

Street-lights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories.

This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities:

- a. Lighting in Public Gardens (i.e. which are open to the general public free of charge);
- b. Traffic signals and Traffic Islands;
- c. Public Water Fountains; and
- d. Such other public places open to the general public free of charge.

This tariff order includes consumer category:

- (A) Gram Panchayat, A, B & C Class Municipal Councils
- (B) Municipal Corporation Areas

On the other hand Non-Residential/ Commercial tariff categorically mentions construction of all types including roads comes under this classification. Please see-

LT II: LT – Non-Residential or Commercial

Applicability:

This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises mentioned (i)

i. Construction of all types of structures/ infrastructures such as buildings, bridges, fly-overs, dams, Power Stations, roads, Aerodromes, tunnels for laying of pipelines for all purposes;

From the concession Agreement submitted by applicant during hearing, as per Section 12 Project facilities: clause 12.3 Street Lighting: 12.3.3 Locations where lighting to be provided: Concessionaire shall provide the lighting at the following locations:

- i) Toll plaza area
- ii) Rest Areas
- iii) Truck lay bye
- iv) Bus Bay& bus shelter locations
- v) Grade separated structure, Interchanges, Flyovers, Underpasses, and over passes,
- vi) Build up sections on the project highways both in the of main carriageway and on the service road on either side.

Present cases filed for levying of 'Street light' tariff category to the Applicant who is using this connection for overbridge and underbridge, Bus bay & bus Shelter locations, Grade Separated structures, Built up sections on highways. **These are the uses for Highways and not for actual street lights.**

As the national highways are constructed for the ease of transportation, the lights are for the convenience of the vehicles passing through the highways for which the vehicle owner are paying toll tax at toll plaza for the services provided. National highways are constructed on design, build, operate and transfer basis and period of operation maintenance is 15 years. Hence the lights provided on Highways in the name of Dilip Buildcon Limited, could not be categorized in LT VI: LT – Street Light till the services becomes free i.e. till the removal of the toll plaza.

Sd/-

Member Secretary

I, do not agree with the opinion of member secretary because the Street Light tariff category is applicable for Street Lighting purpose irrespective of who own, operates or maintains this facility as per tariff order NA, MSEDCL could not prove that M/S Dilip Buildcon limited is collecting the toll from the vehicles passing on the highway. However the Street Lights are not provided on entire stretch of the highway.

The applicability of tariff to various classes of consumers as per tariff order is a matter of record. The Street Lights are provided at certain specific locations like service roads, intersection of villages & town etc. which are for use of local villagers.

Sd/-
Chairman

With above observations, the forum proceeds to pass the following order by majority.

ORDER

1. The Representation in case No. 12/2022 to 24/2022 is allowed.
2. NA MSEDCL is directed to retain the category of connections in r/o applicant to street light category as before.
3. The NA MSEDCL is directed to adjust the difference of amount collected from applicant on account of reclassification of category in the ensuing bills of the applicant.
4. No order as to cost.
5. The compliance of the order be submitted to the Forum within a period of two months.

The Representation could not be decided within the stipulated period as certain information was required to be sought.

Sd/-
(Shri R.B. Mahure)
Chairman

Contact details of Electricity Ombudsman appointed by MERC(CGRF & EO)REGULATIONS 2006 under regulation 10:

THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikripa, Vijai Nagar, Chhaoni,
Nagpur- 440013.

BEFORE THE ELECTRICITY OMBUDSMAN, NAGPUR

REPRESENTATION NO. 44 of 2022

Filed on : 11.10.2022

In the matter of change in street light Tariff

M/s National Highway Authority of India,
PIU, Aurangabad

User - M/s Dilip Buildcon Limited,

..... Appellant

Smt. Tanya Dixit, Legal Department

Plot No. 05, Inside Govind Narayan Singh Gate,

Kolar Road, Chunnabhatti, Bhopal (M. P.)

..... V/s

The Executive Engineer (Admn.),

..... Respondent

Maharashtra State Electricity Distribution Co. Ltd.,

O & M, Rural Circle, Opposite Garware Stadium,

MIDC, Chikalthana, Aurangabad

Appearances :

Appellant: Tanya Dixit

Respondent: 1. Tejas Shah, Executive Engineer (Adm.)
2. Todkar, Dy. Executive Engineer

Coram: Bhalchandra Khandait
Electricity Ombudsman, Nagpur

ORDER

Date of Hearing : 24.11.2022

Date of Order : 05.01.2023

The Appellant has filed this Representation on 11.10.2022 against the order dated 21.09.2022 passed by the Consumer Grievance Redressal Forum, Aurangabad (the Forum) in Case Nos. 908, 909, 910, 911, 912 and 913 of 2022



under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020).

2 The Representation of the Appellant in brief is as below:-

2.1 The Appellant is the Contractor, awarded with the work of "Construction and Development of Karodi to Telwadi road section of NH 211 (new NH no. 52) in the State of Maharashtra" (hereinafter referred to as "said Project") by National Highways Authority of India (NHAI).

2.2 At certain sections of the Highway, for the purpose of lightning of the street lights, the Appellant procured various connections bearing following consumer numbers from Respondent with the tariff categorization as LT VI Street Light Tariff category.

S.No	Consumer Name & Add.	Connection No.	Sanctioned Tariff	Changed Tariff
1.	NHAI, Project Implementation Unit (PIU) Aurangabad	504440004561	LT-VI	LT-II
2.	NHAI, PIU Aurangabad	502221506494	LT-VI	LT- II
3.	NHAI, PIU Aurangabad	502051508772	LT-VI	LT-II
4.	NHAI, PIU Aurangabad	502051508781	LT-VI	LT- II
5.	NHAI, PIU Aurangabad	502240013644	LT-VI	LT-II
6.	NHAI, PIU Aurangabad	502170005541	LT-VI	LT- II

In all these cases, nature of dispute and parties are same, hence the cases are clubbed together and decided by common judgement.

2.3 It is submitted that being the Engineering Procurement Construction (EPC) Contractor of the said project, and under the obligation to procure and maintain the National Highway and facilities available on it, for a period of 4 years, the Appellant approached the Authority (NHAI) to procure estimate from Respondent for lightning of street lights, and NHAI vide their letters bearing ref. No. NHAI/PIU/AUR/NH-211/K-T/Utility/2020/794, 795 and 796 dated 01.06.2020, informed Respondent that Appellant is the EPC Contractor



of the said project, and that they shall be procuring the connections and operating the same as being obligated under the EPC Contract, simultaneously informing the Respondent that the connections shall be obtained under the name of NHAI-PIU, Aurangabad since the said connections are under the ownership of NHAI.

2.4 The Appellant accordingly procured the above cited connections under the name of NHAI-PIU, Aurangabad and the connections as being used for the purpose of lighting of street lights were granted LT VI Street Light tariff category. Thereafter the Appellant was issued with the electricity bills by the Respondents from time to time under the LT-VI (A) category and the Appellant duly paid the said bills without any delay or default. The electricity bills for the period from the sanctioned date till the date, on which the last bill generated under LT-VI category, were duly paid by the Appellant under the said category.

2.5 It is to note that the street lights available on the said highway are under the ownership of NHAI and Appellant is merely a licensee of the project awarded with the right to construct maintain and handover the same to NHAI after a definite time period. The Appellant vide its applications, secured the above cited connection in the following manner:

S. No.	Consumer Name & Add.	Connection No.	Application Date	Sanctioned Date
1	NHAI, PIU Aurangabad	504440004561	23.02.2021	23.02.2021
2	NHAI, PIU Aurangabad	502221506494	18.09.2020	14.10.2020
3	NHAI, PIU Aurangabad	502051508772	18.09.2020	12.10.2020
4	NHAI, PIU Aurangabad	502051508781	18.09.2020	14.10.2020
5	NHAI, PIU Aurangabad	502240013644	23.02.2021	03.03.2021
6	NHAI, PIU Aurangabad	502170005541	18.09.2020	27.09.2020



- 2.6 This is borne out by the application made by the Appellant in which it informed the purpose for which it was securing the connection and also borne out by the fact that the Respondent admitted by conduct of grant under LT VI (A), that the connections were for the purpose of use as Street lights on the National Highway project.
- 2.7 Notwithstanding the above sequence of facts, and to the utter shock and dismay of the Appellant, the Respondents, arbitrarily reclassified the category/classification of the above cited connection in the following manner to Commercial category without any intimation or notice to the Appellant.

S.No.	Consumer No.	Revision month	Debit Principal Adjustment
1	502170005541	May, 2022	Rs. 2,15,574/-
2	502240013644	November, 2021	Rs. 1654/-
3	502051508781	May, 2022	Rs. 4,46,665/-
4	502051508772	November, 2021	Rs. 621593/-
5	502221506494	May, 2022	Rs. 3,85,817/-
6	504440004561	November, 2021	Rs. 2,35,197/-

It is pertinent to mention here that the reclassification of the category of the aforementioned connections has caused a considerable hike in the charges levied on the Appellant, besides being inherently wrong.

Subsequently the Respondents arbitrarily imposed arrears on the above cited connections without issuance of any prior notice in this regard.

It is important to bring on record that the reclassification of the above cited connections from LT-VI (A) category to LT-II (B) category is fundamentally flawed on facts and is bad in law.

- 2.8 That being aggrieved by such reclassification, the Appellant on 01.03.2022 submitted its grievance before the Internal Grievance Redressal Cell, Aurangabad challenging the upward revision of the connections obtained by the Appellant at the said Project.



- 2.9 That since no redressal was provided by the IGR, Aurangabad within a period of 15 days, constraining the Appellant to approach the Forum, on 21.03.2022 in order to challenge the reclassification of the connections obtained by the Appellant as being unilateral action by the Respondent and is liable to be withdrawn.
- 2.10 Subsequently while the Appellant filed its grievance before the Forum on 21.03.2022 and while the due date for connections nos. 504440004561, 502051508772, 502051508781 was 30.03.2022, 28.03.2022 and 28.03.2022 respectively, the Respondent on 22.03.2022 disconnected the said connections, on account of non-payment of arrears raised due to the reclassification of the connections without issuance of any prior notice of disconnection. Since the connections were being used for the purpose of operation of street lights and such disconnection could have resulted into fatal accidents, the Appellant filed Writ Petition bearing case no. WP 3887/2022 before Hon'ble Bombay High Court, Aurangabad Bench in order to obtain relief against the unjustified reclassification of tariff category of the connections and procure reinstatement of the electricity connections disconnected by the Respondents without following the due process of law. It is submitted that the Hon'ble High Court through its order dated 28.03.2022 directed the Appellant to submit Rs. 10 lakhs against the arrears raised and directed the Respondents to restore the electricity connections immediately. Thus the Appellant approached the Hon'ble High Court in order to obtain urgent relief against the arbitrary actions of the Respondents against the Appellant.
- 2.11 The Hon'ble High Court further through their order dated 26.07.2022 issued their order that since the proceeding before the Forum are pending the Writ Petition be disposed of, thereby disposed the WP on the ground that the said matter shall be adjudicated by the Forum.



- 2.12 The proceedings before the Forum were carried out accordingly, and the Forum dismissed the grievances filed by the Appellant vide their order dated 21.09.2022. The grievance of the Appellant was dismissed on the ground that the reclassification of the connections from LT VI Street Light tariff category to LT II Commercial tariff category is not wrong on the following grounds:
- 2.12.1 National Highway cannot be termed as a public street,
- 2.12.2 The LT II Commercial tariff category is applicable on the connections obtained by the Appellant because the national highway is a commercial/business premise and the street lights are being used in such commercial premises and are ought to be classified under LT II Commercial Tariff category. The toll fees charged from the users of the National Highway ultimately is credited to NHAI and the same is used by them for paying it to the concessionaire against the cost of construction, operation and maintenance of the national Highway. Thus even though the toll fees may not be charged by the Appellant but ultimately they are being paid by the National Highways Authority of India against the cost of construction, operation and maintenance of the National Highway. Thus the said toll fees is charged from the public for the usage of the national Highway, and ultimately the said street and its facilities are not open for general public free of usage.
- 2.12.3 The NHAI circular is not binding on the Forum, as it is only a direction to the concerned regional offices of NHAI and the same are only directions by NHAI and does not hold any binding effect on the state government functionaries. The Forum has further stated that NHAI would have been a state functionary, but it is not a local government body which can be charged under LT VI tariff category.



2.12.4 The Forum relying heavily upon the order of Hon'ble MERC (Commission) in case no. 36/2022 (City Industrial Development Corporation of Maharashtra -CIDCO v/s MSEDCL) and order of Hon'ble Supreme Court in Civil Appeal No. 1672/ 2020 (Assistant Engineer, Ajmer Vidyut Vitaran Nigam Ltd. & Anr. V/s Rahamatullah Khan alias Rahamulla) Judgement, as cited by the Respondents, has also held the retrospective recovery to be in place, and payable by the Appellant.

2.13 It is to note that while the cases were pending before the Forum, the Distribution Licensee revised the tariff categories of certain connection number 502170005541, 50210006924, 502170005533 and 502221506486 and again raised arrears due to the said recategorisation, the grievance of which is filed before the Forum and is still pending.

2.14 It is submitted that the Hon'ble High Court vide its order dated 26.07.2022 directed the Appellants to pay the charges under LT VI street light category and that in case the Forum decides against the Appellants then they have to pay the assessed amounts as a condition for maintaining the electricity connections without prejudice to the rights of the petitioner for challenging the decision of the forum as may be permissible in law.

It is submitted that even after such directions of the Hon'ble High Court, the Respondents continued serving electricity bills to the Appellant under LT II Commercial tariff category, and the Appellant had to pay the said amount in order to avoid any coercive action. It is further submitted that even after the orders of the Hon'ble High Court, the Respondents continued raising the electricity bills not only under LT II tariff category but also continued claiming arrears and interest upon the disputed arrears amounts.



2.15 That while being aggrieved by the noncompliance of the order of the Hon'ble High Court and the unreasoned order of the Forum the undersigned was under the process of filing an appeal against the order of the Forum dated 21.09.2022, it received another demand notice from the Respondent, directing the Appellant to make complete payments against connection numbers 502150006924, 502221506486, 502170005533, 502051508772 within the period of 15 days. It is to note that the Licensee even after providing a period of 15 days to make the payments, arbitrarily and unilaterally disconnected the connections 502170005533 and 502170005541 on 28.09.2022, without issuing any disconnection notice. The Distribution licensee further threatened the undersigned that the above cited connections shall be disconnected in case of non-payment of the complete amounts by 30.09.2022.

That since the street lights on the said National Highway are for the purpose of lightning at the densely populated location or at accident prone areas, and being directed by the Hon'ble High Court to make the payments of the assessed amounts, the Appellant/Consumer was constrained to make the payments of the arrears along with interests and penalties raised, under duress, even after having all the rights to approach the Hon'ble Electricity Ombudsman (EO) and procure requisite orders. The Appellant in regard to the payments made under duress submitted its representation to the Respondent concerned officer informing the payments made and the right of the Appellant to approach the EO for redressal of its grievance.

2.16 Thus being aggrieved by the said reclassification of the tariff category of the connection obtained by the Appellant and the order of the Forum acknowledging and accepting the said reclassification by the Respondent, the present grievance is filed before the EO on the following grounds:



- 2.16.1 The unjustness of the Respondent to abruptly reclassify the connections obtained by the Appellant for the street lights on the project National Highway, into commercial category and demanding the arrears of difference in the tariff retrospectively for connections obtained by the Appellant without any authority of law has constrained the Appellant to approach this EO. Even though the Appellant has procured the electricity connections solely for the purpose of lightning of certain sections of the project National Highway through street lights, and is deriving no profit out of it, the Respondent has classified the connections into commercial category, thereby increasing the applicable tariff of those connections significantly. The mechanical manner in which the Respondent has acted is further apparent due to the fact that it had even claimed arrears in some connections while the tariff categorization was reclassified at a later stage.
- 2.16.2 It is to be noted that the Forum has completely ignored the fact that the connections obtained by the undersigned are solely for the purpose of lightning of street lights and for no other purpose. It is to be noted that the National Highway is not serving any purpose other than benefiting the general public at large, by not only connecting the country from one end to the other but also for the usage of local public who may be commuting through the said highways within the state and not paying any toll fees for the same.
- 2.16.3 The Appellant submits that it had entered into an "EPC Contract" with National Highways Authority of India (NHAI) for the purpose of "construction and maintenance of *Four/Six laning of Karodi to Telwadi Road comprising of length 54.896 kms*" on 16/02/2018. The EPC contract sets out various responsibilities on the Appellant inter alia to construct and maintain the project highway along with provisions of project facilities including street lights, toll plazas, and pedestrian facilities for



a stipulated period of time. After the completion of project and as a part of the EPC contract, the Appellant is required to provide project facilities and further maintain and operate them for a period of 4 years. As per Schedule D of the EPC Contract, all the materials, works, construction and operations are to be in conformity with the Manual of Specifications and Standards for Four Laning of Highways and Manual of Specifications and Standards for Six Laning of Highways published by Indian Roads Congress. Since the project facilities as defined in Schedule-C of the Contract also includes street lighting, it is the obligation of the Appellant to provide and maintain the street lights at the specified locations of the Project Highway. It is further the responsibility of the Appellant to make suitable arrangements for procuring power supply and paying the electricity bills. The IRC manual has also casted an obligation on the Appellant to bear all the costs of procurement, installation, running and operation cost of all lighting, including cost of energy consumption. Thus, under the EPC contract the responsibility of obtaining electricity connection among other facility was of the Appellant, it being EPC contractor. Accordingly, the Appellant obtained the above cited electricity connection for street lights in the name of NHAI, PIU Aurangabad who is the owner of the project assets. It is further submitted that in order to avoid any issue with the fact that the present grievance is being filed by Dilip Buildcon Ltd., while the connection is in the name and style of NHAI PIU Aurangabad, the Appellant is hereby submitting the Authorization obtained from NHAI bearing Ref No. NHAI/ PIU/AUR/ NH-52/K-T/2022/1554 dated 29.07.2022, authorizing the Appellant to file the grievance and obtain appropriate relief on its behalf, regarding the arbitrary reclassification of the connection from LT VI Street Light tariff category to LT II Commercial Tariff category.



2.16.4 The Appellant further submits that being aware of the conduct of State-owned electricity distribution companies across India, the National Highway Authority of India has tried to reason out with the Respondent by issuing a circular dated 17.11.2020. The circular specifically stated that the street lights for all the projects are vested and under the control of NHAI, and the same must be categorized with the tariff category equivalent to categories with which the local municipal bodies and gram panchayats are charged, as the street lights on the National Highway render the similar function as served by street lights available under the street under the jurisdiction of Municipal Bodies/panchayats.

2.16.5 The Appellant further submits that, apart from the project highway of Karodi-Telwadi stretch, the Appellant is also the contractor as the Construction, Operations and Maintenance Contractor with respect to construction, operation and maintenance of other national highway projects within the State of Maharashtra name construction and development of National Highway No. 361 from Mahagaon to Yavatmal, Yavatmal to Wardha and Wardha to Butibori. Even with respect to such other Project Highways the Respondent through the concerned division has been acting illegally by similarly categorizing the electricity connections from LT VI Street Lights to LT II Commercial tariff category, and demanded the arrears due to such recategorisation retrospectively. Thus the action of the Respondent is not only limited to the Karodi-Telwadi stretch project highway but also stretches to other projects within the State of Maharashtra.

That being aggrieved by such retrospective reclassification of the connection from LT VI to LT II Category, the Appellant through its concerned subsidiary for the other projects awarded to in the state of Maharashtra, submitted its application before the Forum, Amravati dated 21.03.2022, and before the Forum, Nagpur dated 25.03.2022,



wherein the Forum's through their orders dated 27.05.2022 and 20.05.2022 respectively held that the connections obtained for the purpose of operations of Street lights and other facilities on a National Highway within the territory of the State of Maharashtra are rendered free of charge to its users, as no cost is being levied by the Appellant or any its subsidiaries from the users of National Highway. The Forums Amravati and Nagpur through their orders directed the Respondent to apply street light LT VI category.

- 2.16.6 In furtherance of the above stated facts, reference must be had to the Tariff Order of the year 2019-2020 applicable from 2020-21 to 2024-25 from where the classification of categories of the connections obtained by the Appellant vis-à-vis. Commercial as well as Street Light category, is purported to be emanating. The relevant section of the Tariff order is reproduced below:

*"LT II: LT – Non-Residential or Commercial LT II (A): 0 - 20 kW
Applicability:*

This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises:

- a) Non-Residential, Commercial and Business premises, including Shopping Malls and Showrooms;*
- b) Combined lighting and power supply for facilities relating to Entertainment, including film studios, cinemas and theatres (including multiplexes), Hospitality, Leisure, Meeting/Town Halls, and places of Recreation and Public Entertainment, Offices, including Commercial Establishments; Marriage halls, Hotels/ restraints, Ice-cream parlours, Coffee Shops, Guest Houses, Internet/ Cyber Cafes, Telephone Booths not covered under LT I category, and Fax/ Photocopy shops;*



- c) Automobile and all other types of repairs, servicing and maintenance centres (unless specifically covered under another tariff category); Retail Gas Filling Stations, Petrol Pumps and Service Stations, including Garages;
- d) Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, Laundries, Beauty Parlours and Saloons;
- e) Banks and ATM centres, Telephone Exchanges, TV Stations, Microwave Stations, Radio Stations;
- f) Common facilities, like Water Pumping / Lifts / Fire-Fighting Pumps and other equipment/ Street and other common area Lighting, etc., in Commercial Complexes;
- g) Sports Clubs/facilities, Health Clubs/facilities, Gymnasiums, Swimming Pools not covered under any other category;
- h) External illumination of monuments/ historical/ heritage buildings approved by Maharashtra Tourism Development Corporation (MTDC) or the concerned Local Authority;
- i) Construction of all types of structures/ infrastructures such as buildings, bridges, flyovers, dams, Power Stations, roads, Aerodromes, tunnels for laying of pipelines for all purposes;

LT VI: LT - Street Light Applicability:

This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares, which are open for use by the general public, at Low / Medium Voltage, and also at High Voltage.

Streetlights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories.

This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities:

- a) Lighting in Public Gardens (i.e. which are open to the general public free of charge);
- b) Traffic Signals and Traffic Islands;
- c) Public Sanitary Conveniences;
- d) Public Water Fountains; and



e) Such other public places open to the general public free of charge.

This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for facilities open to general public free of charge, irrespective of who owns, operates or maintains such facilities."

Thus in the present matter also, the connections obtained by the Appellant are being used for the purpose of electricity supply to the street lights of an infrastructure Project (highway) which are open for use by the general public, and no charge is being levied by the Appellant from such operations, therefore the connections as cited above must be classified under the category of Street Light i.e. LT- VI (A) and not under any other category.

2.17 It is also important to note that the commercial tariff category is contemplated to be applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, and washing/cleaning, entertainment/ leisure and water pumping. The Tariff order itself further specifies the exhaustive list of categories wherein the said category shall be applicable, which nowhere enumerates "street lights erected for public usage" etc. Thus the connections obtained by the Appellant are not used for any commercial purposes, or supply electricity to any commercial establishment, therefore the connections of the Appellant cannot be categorized under commercial tariff category.

2.18 It is important to note that the street lights are not installed on the entire stretch of the highway but certain specific places like, service roads and intersections of villages and towns etc., which are open for use of the local residents free of charge. The main purpose is to prevent and avoid the accidents and mis-happening to the general public at



large. By no stretch of imagination can the street lights or connections obtained for its operation be deemed to be commercial one, as the local users who are also benefited through these street lights of the National Highways are never charged for usage of the Highway.

- 2.19 It is also to note that the Respondent have not only reclassified the consumer category of the connections obtained by the Appellant but have also demanded arrears as the difference in the amount of tariff from LT VI to LT II from the date of connection till the date of reclassification. For this purpose it is submitted that, such retrospective recovery of arrears is impermissible in law. It is a settled position of law that no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of consumer. The reclassification must follow a definite process of natural justice and the recovery, if any, can only be prospective, as the earlier classification was done with a distinct application of mind by the competent people. The consumer cannot be vexed if the Respondent was negligent in recovering the amount due, if at all. On this count alone the demand of arrears deserves to be declared illegal and be quashed and set aside.
- 2.20 For this purpose the Appellant would like to bring to the kind notice of the Forum the order passed by the Forum in the case no. 24 of 2001, wherein the Forum has held that:

"No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be



sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective."

Thus such retrospective reclassification of the captioned connections is barred by law which is duly apprised by the Forum also and thus such acts of reclassification as well as imposition of arrears is an arbitrary act carried out by MSEDCL and is liable to be set aside by this Forum.

Further it is submitted that the circular is not only with respect to utilities of National Highway present within the boundaries governed by Central Government but is also for the purpose of operation of the circular and categorization of street lights by the State Government utility owning agencies for the Street Lights present on the National Highway in a particular state.

- 2.21 That it is a settled principle of law that the Authority is estopped from reclassification of the tariff category once they have already classified the connections under a specified category and charged the consumer with the tariff category of Street Light i.e. LT-VI (A), and now the Authority is estopped from reclassifying the said connections tariff category as Commercial i.e. LT II.

According to doctrine of estoppel

"when one person either by his act or omission, or by declaration, has made another person believe something to be true and persuaded that person to act upon it, then in no case can he or his representative deny the truth of that thing later in the suit or in the proceedings. In simple words, estoppel means one cannot contradict, deny or declare to be false the previous statement made by him"



Thus in light of the above said principle of the law of estoppel, the Assessing Authority is estopped from reclassification of the tariff category since they have already charged the Appellant with the tariff category of Street Light i.e. LT-VI(A) and now the Authority is estopped from reclassifying the said connections tariff category as Commercial i.e. LT-II (B). The Authority themselves had categorized the tariff connections of the Appellant as Street Light and the electricity bill with the said tariff category, thus now suddenly the Authority cannot contradict, deny or declare to be false the previous bills assessed and raised by them, and reclassify the connections under a different tariff category as authority is estopped from doing so in accordance to the principles of the doctrine of estoppel.

2.22 Prayer of the Appellant

- 2.22.1 Hold and declare that, the electricity connections for the street lights installed on National Highways fall under the 'LT VI - Street Light' category under the prevailing Tariff Order of the Commission;
- 2.22.2 Hold and declare that the reclassification of the consumer category from LT VI - Street Light to LT II - Commercial, of the electricity connections for the street lights installed on the project National Highway, is unjustified, illogical and arbitrary;
- 2.22.3 Hold and declare that it is impermissible for the Respondent to retrospectively recover the difference in the amount of bills from the date of electricity connection till the date of reclassification of the consumer category of those connections;
- 2.22.4 By an appropriate order of direction, quash and set aside the action of the Respondent in reclassifying the consumer category of the electricity connections for street lights installed on the project National Highway, obtained by the Appellant;



- 2.22.5 By an appropriate order of direction, quash and set aside the retrospective demand of arrears for the difference in the amount of tariff from the date of electricity connection till the date of reclassification of the consumer category;
- 2.22.6 By an appropriate order of direction, quash and set aside the retrospective demand of arrears for the difference in the amount of tariff from the date of electricity connection till the present date without even reclassifying the consumer category of those connections;
- 2.22.7 Direct the Respondent to adjust in the future bills of the Appellant, the excess amounts paid by the Appellant in lieu of recategorized tariff category under LT II and arrears, interest and penalty paid by the Appellant in compliance to the order of the Hon'ble high Court dated 26.07.2022;
- 2.22.8 During the pendency of the present grievance, restrain the Respondent from taking any coercive action such as disconnecting the electricity connection;
- 2.22.9 Grant any other relief that this EO may deem fit and proper in the facts and circumstances of the present matter.
3. The Respondent submitted its reply on 07.11.2022 which in short is as below:-
- 3.1 The Appellant has entered into the contract with M/s NHAI for the building and maintenance of the said National High Way for 4 years. It is purely a commercial Contract between the NHAI and the Appellant. The Appellant is a Pvt. Limited company and earns a profit from its business.
- 3.2 Commission is the sole authority to decide the electricity tariff and its applicability in the state.



- 3.3 As per Commission Tariff Order in Case No.322/2019, the Tariff Category LT VI: LT Street Light is applicable for the Street Lights of local government authorities such as Grampanchyats and Municipal Councils/Corporations. The applicability given in the orders is reproduced below:-

"LT VI: LT - Street Light

Applicability:

This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at Low / Medium Voltage, and at High Voltage.

Street-lights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories.

This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities:

- a. Lighting in Public Gardens (i.e. which are open to the general public free of charge);*
- b. Traffic Signals and Traffic Islands;*
- c. Public Water Fountains; and*
- d. Such other public places open to the general public free of charge."*

Rate Schedule

Tariff w.e.f. 1 April, 2020 to 31 March, 2021

Consumer Category	Fixed/Demand Charge (Rs/kW/Month)	Wheeling Charge (Rs/kWh)	Energy Charge (Rs/kWh)
LT VI: LT - Street Light			
(A) Gram Panchayat, A, B & C Class Municipal Councils	111.00	1.45	4.90
(B) Municipal Corporation Areas	111.00	1.45	5.97

- 3.4 From the above, it is clear that, only street lights operated by Gram Panchyat, A, B & C Class Municipal Councils and Municipal Corporation Areas are covered under this category.



- 3.5 As regards to other areas covered under this tariff, only public gardens (open free of charge), Traffic Signals & Traffic Islands, Public Water Fountains and Other Public Places open to general public free of charge are covered irrespective of who owns, operates & maintains it. Had the intention of the Hon'ble Commission to allow this tariff to the Appellant's connections, the Hon'ble Commission would also have included them in the applicability or else mentioned "irrespective of who owns, operates and maintains it" instead of specifically mentioning Gram Panchyat, A, B & C Class Municipal Councils and Municipal Corporation Areas.
- 3.6 It is clear that, Hon'ble Commission has excluded such connections as that of the Appellant from the Street Light Tariff category because these authorities are providing the service to the common citizen without any intent of making profit.
- 3.7 If at all, the Central Government of India would have included NHAI as local government authority under its own powers, but that is not done. So, NHAI cannot be said to be at par with the other local government authorities prescribed under Street Light Tariff.
- 3.8 The contention of the Appellant that they shall be considered at par with the local government authorities is misplaced for the fact that, MSEDCL or the Forum are not the authorities to decide on such matters. The authority lies with the appropriate government to declare anyone at par with the local government authority or Hon'ble Commission to include such connections as that of the petitioner in the Street Light tariff in its tariff order. Allowing such tariff category to the connections of the Appellant would amount to accept that the Appellant is at par with the Grampanchayat/Municipal Council/Corporation which will be erroneous view.
- 3.9 The judgments cited by the Appellant of the other Forums are not binding on this Forum.



- 3.10 In order to further explain the stand of the Respondent, here is an example. Suppose, a person visits a Shopping Mall/Commercial Complex. He is using the illumination of the street light. The Shopping Mall/Commercial Complex does not charge the person to visit the premises nor the person is obligated to purchase anything from that Mall/Complex, i.e. the visitor common person is using the street lights in such complexes free of charge. Still the street lights, being in the premises of the Shopping Mall/Commercial Complex, are charged at its respective tariff category i.e. Commercial tariff.
- 3.11 Hence, the contention that the Appellant is also offering the Street Lights and hence the same shall be considered for Street Light tariff is absolutely wrong and illegal being not in accordance with the Commission's Tariff Orders.
- 3.12 Going further, it is pertinent to note that Commission has prescribed separate tariffs for government schools and private schools, government hospitals and private hospitals etc. which clearly states the intent of the Commission while defining the different tariff categories/sub categories in its tariff orders even though the purpose is same.
- 3.13 This is done by Commission by mainly considering the fact that the tariff for such public services which are for the use by general public are lower and supported by the Cross Subsidy from the other high end Residential, Commercial and Industrial Consumers. There is a social aspect to such tariff philosophy. Allowing Street Light tariff to the Appellant's connections will result into increased cross-subsidization from other category consumers. Such increase in tariff will be in addition to the toll charges such consumers will have to pay when they are using the toll road.



3.14 As regards to retrospective reclassification of the Appellant's connections, the Respondent draw attention to Para 21 of the judgment delivered by Hon'ble Apex Court dated 05.10.2021 in Civil Appeal 7235/2009 (M/s Prem Cottex v/s Uttar Haryana Bijlee Nigam Ltd. & ors.) It is stated by the Hon'ble Apex Court.

"If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency."

"As such, when this fact came to the notice of the Flying Squad that the consumer is being under-billed due to wrong tariff category, the revised bill was issued to the petitioner for such under billing."

3.15 The Respondent also draws attention to the judgment of Hon'ble Apex Court in CA 1672/2020 (Ajmer Vidyut Nigam Ltd. v/s Rahimatulla Khan alias Rahamjulla) dated 18.02.2020. The para 9 of the said judgment is reproduced below:-

"9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired."

"Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand."

"As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time."

In Mahabir Kishore and Ors. v. State of Madhya Pradesh,⁵ this Court held that:-

"Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law." (emphasis supplied)"

"In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act."

- 3.16 The Respondent also drew attention to the judgments delivered by Hon'ble EO Mumbai in R.No.15, 16, 17, 18 & 19 of 2022 dated 22.04.2022 wherein, in a similar case of re-categorization and retrospective recovery has been allowed.
- 3.17 In view of the above judgments of the Hon'ble Apex Court and also by the EO, the demand raised by us and reclassification done is completely legal.
- 3.18 The Appellant referred the Circular (Circular No. 42676 dated 17.11.2020) of NHAI. It is the Directions to the ROs to take up the matter with respective Electricity departments of State Governments for charging tariffs equivalent to local municipal bodies/Gram panchayats for street lighting for the projects of NHAI. The Circular of NHAI has no effect regarding the applicability of tariff as it is their internal communication and not binding on the Commission while



determining the tariff. It would be appropriate for the NHAI to take up this issue during the next tariff determination period for the consideration of Commission.

3.19 The Respondent also draw attention to the Para D (Grounds of appeal) of the petition filed before Hon'ble High Court, Aurangabad Bench in WP3887/2022 in which the petitioner himself claims that only Commission can decide as to whether the petitioner's electricity connections would fall under LT-VI Street Light tariff or under LT-II Commercial tariff.

3.20 Along with the above submission certain aspects which also needs to be considered are -

3.20.1 Present case is filed for levying of 'Street light' tariff category. However, it is to be noted that the Appellant is using these connections at various locations such as bridges, Bus bays & Shelter locations, Grade Separated structures, toll booths and Built up sections on highways. Which means the use is not for only street lights on street but at other places other than streets also.

3.20.2 It is admitted fact that a fees in the form of toll charges is being collected from every vehicle using this highway meaning that the use of the street is not free of charge, even if the fees is not being directly collected by the NHAI or M/s Dilip Buildcon. It is immaterial as to who is collecting the toll fees as long as the fact is the street is not free to use but charge has to be paid for its use.

3.20.3 It is also to be noted that as per agreement between NHAI & M/s DBL, it is a Contractual obligation of the Applicant Company to bear all costs of procurement, installation, running and operation cost of all lighting, including cost of energy consumption. Adequate Lighting arrangement on the National Highway for the contractual period is a commercial obligation mentioned in the Project Agreement.



3.20.4 The Respondent also drew the attention to the recent order of the Commission in Case No. 36/2022 dated 27.06.2022 in the similar matter wherein the prayer of CIDCO to charge them as per Public Water Works tariff instead of Commercial Tariff claiming that its activities are identical to other organizations covered in applicability of HT-IV category. The said petition has been dismissed by Commission. The relevant portion of the said order is reproduced below:-

"12.5 In this regard, the Commission notes that said tariff categorization has been decided through public consultation process under Section 62 (4) of the Electricity Act 2003. Since 2012, the Commission have issued various tariff Orders after following due public consultation process. But in none of the proceedings, CIDCO has raised objection regarding applicability of HT-IV category. Without availing opportunity made available from time to time, CIDCO through present Petition is seeking revision in tariff applicability with retrospective effect of August 2012 i.e. 10 years back. This is clearly lapse on part of CIDCO and the Commission cannot allow such request through petition of present nature. Any change in tariff categorization needs to be dealt with during tariff determination process. Next tariff determination process will be started in November 2022, CIDCO may submit its suggestion / objection / justification on tariff categorization during that process."

3.20.5 The Appellant has cited the order of the Forum in Case No.24 of 2001 regarding retrospective reclassification. However, we wish to point out that this order is dated 11.02.2003 i.e. prior to the issuance of Supply Code Regulations 2005. So also, considering the recent views of Hon'ble Supreme Court, Commission and EO in their recent judgments cited above, this cited order of Commission has no relevance now.

3.20.6 Thus the electricity connections of the applicant have been rightly reclassified in the tariff Category LT-II Commercial as per the applicable Tariff Order of Commission and the demand is raised for the under billing due to mistake in tariff classification of the



connections. The mistake has been corrected as soon as it is discovered/ came to the notice.

In view of above mentioned aspects, it is requested to dismiss the representation filed by the Appellant being devoid of any merit.

3.21 In view of the above mentioned aspects, it is requested to dismiss the Representation filed by the Appellant.

4. E-hearing was held on 24.11.2022 through video conferencing. During the hearing the Appellant and the Respondent reiterated important points in their written submissions. The Appellant contended that, the street lights on the said National Highway are for the purpose of lighting at the populated location or at an accident prone areas and these are not installed on the entire stretch of the highway, but at certain specific places like service roads and intersections of villages and towns etc. which are open for use of the local public living in adjoining areas who happen to access these spots frequently. The Appellant further pleaded that the reclassification of its tariff category retrospectively without providing any opportunity and prior notice is against the rule of natural justice. Respondent contended that the street lights are not in Grampanchayat / Municipal Council area and hence LT - VI tariff is not applicable. It is a commercial activity. On being asked, both the Respondent and the Appellant confirmed that all these connections are for street lights only and it does not include toll naka or other amenities.

5. Analysis and Ruling:-

Heard both the parties and seen the documents submitted and observed the following.

The Appellant is the Agency, executing the work of "Construction and Development of Karodi to Telwadi road section of NH 211 (new NH no. 52) in the State of Maharashtra" on behalf of National Highways Authority of India (NHAI).



- 5.1 For the purpose of lighting of the street lights the Appellant procured various connections on behalf of NHAI from Respondent.
- 5.2 Respondent issued 6 numbers of street light connections from January 2021 onwards with the tariff categorization as LT VI Street Light.
- 5.3 The Appellant procured the above cited connections under the name of NHAI-PIU, Aurangabad. Thereafter the Appellant was issued the electricity bills by the Respondents from time to time under the LT-VI (A) category and the Appellant duly paid the said bills without any delay or default.
- 5.4 Respondent's officers visited the spots from November 2021 onwards and reclassified the category/classification of the above cited connections to LT-II Commercial category without any intimation or notice to the Appellant, also imposed arrears from date of connection on the above cited connections.
- 5.5 The main grievance of the Appellant in this representation is the reclassification of the connections from LT VI Street Light tariff category to LT II Commercial tariff category, and imposition of arrears thereof.
- 5.6 As regards to retrospective recovery, the Appellant has cited the order of the Commission in Case No.24/2001 wherein it is ruled that any recovery would be prospective only and hence pleaded that such retrospective recovery is illegal.

In support of the retrospective recovery, the Respondent cited the judgment dated 18.02.2020 delivered by Hon'ble Supreme Court in Civil Appeal No.1672/2020 (Assistant Engineer, Ajmer Vidyut Vitaran Nigam Ltd. & Anr. V/s Rahamatullah Khan alias Rahamjulla). In the said judgment, it is held that:-

"9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011."



"The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56 (2) had by then already expired."

"Section 56 (2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand."

- 5.7 The Respondent cited the order of the Commission in Case No. 36/2022 dated 27.06.2022 in the matter wherein the prayer of CIDCO to charge them as per Public Water Works tariff instead of Commercial Tariff. The subject matter addressed in the Case No. 36 of 2022 is different than the present case.
- 5.8 Before proceeding further it would be important to see, what is prescribed in the tariff order of the Commission in the relevant period as regards to applicability of tariff under LT - VI and LT - II categories. The relevant tariff order dated 30.03.2020 in Case No. 322 of 2019 effective from 01.04.2020 is as below.
- 5.8.1 The applicability under LT - II - Non-residential or commercial is as below.

"LT II: LT - Non-Residential or Commercial

Applicability:

This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises:



- a. Non-Residential, Commercial and Business premises, including Shopping Malls and Showrooms;
- b. Combined lighting and power supply for facilities relating to Entertainment, including film studios, cinemas and theatres (including multiplexes), Hospitality, Leisure, Meeting/Town Halls, and places of Recreation and Public Entertainment; Offices, including Commercial Establishments; Marriage Halls, Hotels / Restaurants, Ice-cream parlours, Coffee Shops, Guest Houses, Internet / Cyber Cafes, Telephone Booths not covered under the LT I category, and Fax / Photocopy shops;
- c. Automobile and all other types of repairs, servicing and maintenance centres (unless specifically covered under another tariff category); Retail Gas Filling Stations, Petrol Pumps and Service Stations, including Garages;
- d. Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, Laundries, Beauty Parlours and Saloons;
- e. Banks and ATM centres, Telephone Exchanges, TV Stations, Microwave Stations, Radio Stations;
- f. Common facilities, like Water Pumping / Lifts / Fire-Fighting Pumps and other equipment / Street and other common area Lighting, etc., in Commercial Complexes;
- g. Sports Clubs/facilities, Health Clubs/facilities, Gymnasiums, Swimming Pools not covered under any other category;
- h. External illumination of monuments/ historical/ heritage buildings approved by Maharashtra Tourism Development Corporation (MTDC) or the concerned Local Authority;
- i. Construction of all types of structures/ infrastructures such as buildings, bridges, fly-overs, dams, Power Stations, roads, Aerodromes, tunnels for laying of pipelines for all purposes;

Note:

Residential LT consumers with consumption above 500 units per month (current month of supply) and who undertake construction or renovation activity in their existing premises shall not require a separate Temporary category connection, and shall be billed at the LT-II Commercial Tariff rate;



- j. Milk Collection Centres;
- k. Sewage Treatment Plants/ Common Effluent Treatment Plants for Commercial Complexes not covered under the LT – Public Water Works or LT – Industry categories.
- l. Advertisements, hoardings (including hoardings fixed on lamp posts/installed along roadsides), and other commercial illumination such as external flood-lights, displays, neon signs at departmental stores, malls, multiplexes, theatres, clubs, hotels and other such establishments.
- m. Temporary supply for any of the activity not covered under Residential category

Provided that Temporary supply consumer shall pay 1.5 time applicable fixed/demand charges and 1.25 time applicable energy charge.

Provided further that temporary supply for operating Fire-Fighting pumps and equipment in residential or other premises shall be charged as per the Tariff category applicable to such premises."

5.8.2 The applicability under LT – VI – LT Street lights is as below.

"LT VI: LT – Street Light

Applicability:

This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at Low / Medium Voltage, and at High Voltage.

Street-lights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories.

This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities:



a. Lighting in Public Gardens (i.e. which are open to the general public free of charge);

b. Traffic Signals and Traffic Islands;"

- 5.9 It is important to note that the tariff order specifically mentions about the applicability of LT - II tariff for street lights in commercial complexes, it has not included tariff for Street lights erected for public uses.
- 5.10 NHAI comes under the Ministry of Roadways under Government of India and the Dilip Buildcon Limited is an operator appointed by NHAI to execute the work of laying out the National Highways at the locations mentioned by the Appellant for the public at large. The street lights are installed on the certain specific places including entry points for service roads, intersection of villages and towns and points near toll booths etc. The main purpose is to provide sufficient lighting for ease of users of roads during evening and nights and ultimately help to avoid accidents and mis-happening to the general public travelling on these roads at large.
- 5.11 The analogy drawn in comparing NHAI as a consumer and residential complexes/commercial complexes/Industrial premises is incorrect, as most of these complexes are the gated communities having their own rules and regulations, and may not be open for all. While the highways (where the street lights are installed) are open for the public in general who are travelling and using it.
- 5.12 It is to be noted that the National Highway is not serving any other purpose than benefiting the general public at large, by not only connecting the country from one end to the other but also for the usage of local public who may be commuting through the said highways.



- 5.13 The main purpose of constructing National Highways by GoI is not to earn profit, but to provide better connectivity facility to citizens of India. Since the GoI is constructing the highways on large scale, the huge investment is needed to execute these projects. The GoI has chosen the option of funding the cost of construction through concept of charging the Toll on usage base. This does not make the activity as commercial one. The agency appointed to execute the construction and maintenance work, Dilip Buildcon in this case is merely working on behalf of NHAI of GoI and not a owner by itself.
- 5.14 The relevant tariff order specifically mentions about the applicability of LT - VI tariff for Public Street which are open for general public. During hearing, on being asked the Respondent also clarified that all these connections are released for street light only and not for toll plaza building or other amenities.
- 5.15 Regarding applicability of Street light tariff LT - VI, the philosophy mentioned in relevant tariff order under
LT - VI - LT Street light is:-

"Applicability:

This tariff category is applicable for the electricity used for lighting of public streets / thoroughfares which are open for use by the general public, at Low / Medium Voltage, and at High Voltage....."

... ..Emphasis added

Looking at the above facts, I am of the considered opinion that, tariff category LT - VI Street light is applicable to the connections as mentioned by Appellant. Therefore the question of recovery of retrospective arrears does not arise. The various references given by the Appellant and the Respondent have no bearing on this case.



6. In view of above, following order is passed:-
- 6.1 Respondent is directed to reclassify the tariff category of the Appellant's connection from LT-II non-residential to LT-VI street lights category from the date of conversion of tariff from LT-VI to LT-II.
- 6.2 Respondent is directed to adjust the amount collected from Appellant on account of reclassification of category in the ensuing bills of the Appellant.
- 6.3 The Respondent to submit compliance within two months.
- 6.4 The order of the Forum is set aside on the above facts.
- 6.5 All other prayers of the Appellant are rejected.
- 6.6 No order as to cost.

Sd/-

(Bhalchandra Khandait)
Electricity Ombudsman,
Nagpur



Certified Copy

(N. S. Chitore)
Secretary



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO.7504 OF 2022

- 1) Maharashtra State Electricity
Distribution Company Limited -
Through its Executive Engineer
(Adm.), O&M. Circle, MSEDCL,
Darva Road, Lohara, Yavatmal.

.... Petitioner(s)

// VERSUS //

- 1) DBL Mahagaon, Kinhi
C/o. M/s. DBL Mahagaon Yavatmal
Highways Pvt. Ltd., through its
director, Plot No.05, Inside Govind
Narayan Singh Gate, Kolar Road,
Chunabhatti, Bhopal, 462016;

- 2) ~~Consumer Grievance Redressal Forum,
Amravati Zone, Amravati, "Vidyut
Bhavan", Shivaji Nagar, Amravati,
444603.~~

(Deleted as per
Court's Order dated
20.07.2023)

... Respondent(s)

Shri S.V. Purohit, Advocate for the Petitioner/s
Shri D.V. Chauhan, Advocate for the Respondent No.1

**CORAM : ANIL S. KILOR, J.
DATED : 23.10.2023**

JUDGMENT :

1. Heard.

nd.thawre



2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The order dated 27.05.2022 passed in Representation No.16/2022 by the Consumer Grievance Redressal Forum, Amravati Region, Amravati, allowing the representation and thereby directing the petitioner/MSEDCL to retain the category of connection in respect of the respondent to 'street light' category and adjust the difference of amount collected from the respondent on account of reclassification of category in the ensuing bills of the applicant/respondent, is under challenge in this writ petition.

4. The brief facts of the present case, are as under:

The respondent is the concessionaire, incorporated solely for the purpose of executing the concession agreement with NHAI dated 09.06.2017 and obligations of the works provided therein i.e. four-laning of Butibori to Tuljapur road on hybrid annuity mode.

5. The respondent secured electricity connection for installment of street lights on the said road and it was granted under the tariff LT-VI(A) category for the purpose of street lights on the national

highway project. The petitioner accordingly, issued bills in the said category from time to time and they were duly paid.

6. However, the petitioner/MSEDCL made reclassification from LT-VI(A) category to LT-II(B) category and thereby made upward revision of electricity bills.

7. Feeling aggrieved by such reclassification, the respondent submitted its grievance before the Internal Grievance Redressal Cell, Yavatmal on 14.03.2022. However, as no decision was given, the respondent approached to the Consumer Grievance Redressal Forum, Amravati Zone, Amravati (in short "the Consumer Forum"), raising challenge to the reclassification.

8. The said representation came to be allowed directing the petitioner/MSEDCL to retain the category of connection i.e. 'street light' category and adjust the difference of amount collected from the respondent by the petitioner on account of reclassification, vide order dated 27.05.2022, the same is the subject matter of challenge in this writ petition.



9. I have heard the learned counsel for the respective parties.

10. The learned counsel for the petitioner submits that the Consumer Forum committed error in ignoring the fact that the connection for the street lights on the national highway was provided to the private agency i.e. the respondent and the use of these highway lights are not for the people to carry out their daily works but mainly for vehicles passing through the highway which are paying the charges at the Toll Plaza. He therefore, submits that it is a commercial activity and therefore, it cannot be categorized in LT-VI(A) category i.e. 'street light'.

11. It is submitted that on spot inspection, the Additional Executive Engineer, Flying Squad, submitted the report for change of tariff category from LT-VI streetlight to LT-II commercial. The report was in accordance with the tariff order dated 03.04.2020. It is submitted that the activity of the respondent is purely commercial and therefore, the reclassification was rightly done.

12. On the other hand, the learned counsel for the respondent/consumer submits that the street lights installed on the

highways are the parts of the project facility as defined in EPC agreement. The project facility include provision of street light in clause 2.1 and schedule 'C' of the agreement. It is submitted that NHAI exercises proprietary and controlling right over the project facility including street lights. As such the respondent is merely a concessionaire in respect of the project and it's facilities. It is submitted that the respondent does not exercise any proprietary, operational and commercial control over the project facilities. It is submitted that the respondent, being contractor, has handed over the project facilities to the NHAI for operation of the Toll Plaza and is liable only towards maintenance of the project and not for collection of user fee from the users of the National Highway.

13. It is submitted that the street lights installed by the respondent render the function of municipal category, as there was no revenue generated from such usage of street lights, rather the connection is for services only for the general public use. He therefore, submits that considering the above referred fact, the Consumer Forum has rightly allowed the representation.



14. The learned counsel for the respondent further submits that the petitioner, without any reasonable cause, has revised the tariff without affording any opportunity of fair hearing. It is therefore, submitted that the decision of reclassification is erroneous and it was accordingly, rightly held by the Consumer Forum.

15. The learned counsel for the respondent has pointed out the various decision of the Consumer Forum as well as the Ombudsman, wherein a similar view was taken, as taken in this case by the Consumer Forum. He therefore, submits that once the specialized Tribunal has taken certain view, in such matter the Courts have to tread with extreme care and caution. It is submitted that a body that deals with a particular type of matters on an everyday basis would be expected to have greater command over the law applicable in the field and a Constitutional Court would not interfere with a view expressed on interpretation unless it appears to be grossly inappropriate and almost outlandish. In support of his submission, he has placed reliance on the judgment of *Ri Kynjai*

Serenity by the Lake and Others Vs. Principal Commissioner of Income Tax and Another¹.

16. In light of the rival submissions of the parties, I have perused the record and the impugned order.

17. After going through the impugned order, it is evident that the Chairman of the Consumer Forum has held in favour of the respondent and retained the category of connection as 'street light'. Whereas, the Member Secretary has recorded contrary view and held that the petitioner has rightly applied the commercial tariff to the respondent.

18. According to the Chairman of the Consumer Forum, the respondent has not provided street lights on entire stretch of the highway but certain specific places like service roads, intersection of villages & towns etc. which are for use of local residents free of charge. It is further observed that, the street lights provided on the high way passing through the villages/towns are for ease of local residents to carry out their day to day activities and to avoid

¹ 2023 SCC OnLine Megh 342



accidents and mis-happening and nothing to do with the collection of toll. It is also observed that the respondent is not entitled to collect the toll from the vehicles and the petitioner has given connection for street lights only and not for Toll Plaza and other amenities.

19. Thus, considering the actual usage and not considering the nature of activities, the Chairman of the Consumer Forum, arrived at a conclusion that since it is for the public benefits, tariff should be 'street light' tariff category.

20. Contrary to the same, the Member Secretary has observed that these highway lights are not for the people to carry out their daily works but mainly for the vehicles passing through the highway, as these vehicles are paying the charges at the Toll Plaza and since it is commercial activity, the tariff should be of commercial tariff category.

21. It is pertinent to note that, the street light category tariff i.e. LT-VI is applicable for the electricity used for lighting of public streets thorough fares which are open for use by the general public

at Low/Medium Voltage and at High Voltage. Street lights in residential complexes, commercial complexes, industrial premises etc. will be billed at the tariff of the respective applicable categories.

22. Whereas, LT-II i.e. the non-residential/commercial tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating cooling, cooking, washing/cleaning, entertainment/leisure and water pumping in, but not limited to, the premises enumerated under the said category.

23. Thus, it is apparent that the usage of electricity is relevant in the matter at the hand. It is not the case of the petitioner that the street lights are provided for the entire stretch of the highway. From the record, it can be seen that the street lights are provided at certain specific places like service roads, intersection of villages and towns. The photographs filed by the respondents along with the reply support the case of the respondent that the street lights are installed for use of local residents free of charge.



10/11

127wp75804-22(JUD).odt

24. The petitioner has not pointed out anything to show that the usage is commercial which is meant for operating various appliances used for purposes of specified in LT-II, which is the pre-requisite to apply LT-II category i.e. the commercial category tariff.

25. The mere fact that street lights are installed on over bridges and under bridges or at bus bay and bus shelter locations, build up sections on the project highways, is not sufficient to arrive at a conclusion that the use of electricity is for commercial consumption. Similarly, the fact that the street lights are installed on certain highways is not sufficient to hold that it is for commercial consumption and not for the use of general public.

26. Moreover, the NHAI comes under the Ministry of Roadways under the Government of India. The highway is for the purpose of benefiting the general public at large and the purpose of streets is not to earn the profit but to provide connectivity and facilities to the citizens of India. A huge investment required for such construction of highways and therefore, the toll is being collected. However, it will not make the activity as commercial one.

27. Thus, I find substance in the submission of the learned counsel for the respondent that the respondent is merely a concessionaire in respect of the project and its facilities and do not exercise any proprietary, operational and commercial control over the project facilities.

28. It is also evident that the respondent, as a contractor, has handed over the project facilities to NHAI for operation of Toll Plaza and the respondent is liable only towards maintenance of the project and not for collection of user fee from the users of the national highways. Thus, in the peculiar facts and circumstances of this case, it is difficult to accept that it is the commercial activity to which the LT-II tariff will apply.

29. In the circumstances, I do not find any merits in the present matter, accordingly, the writ petition is **dismissed**.

Rule is discharged. No order as to costs.

[ANIL S. KILOR, J.]