

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No.1478/2015.

In the matter of:

Petition under Section 61, 62, 64, 86 and other applicable provisions of the Electricity Act, 2003 for Petitioner's Electric Connection No. HT-18088 for construction purpose and in the matter of the applicable tariff rate HTP - I instead of tariff rate HTP -III as per the relevant tariff order and the regulations.

Petitioner : M/s. Shantigram Estate Management Pvt. Limited
CBD, Shantigram, Near Vaishnodevi Circle,
S.G. Highway, Ahmedabad - 382421

Represented By : Learned Advocate Shri G.K. Prajapati and K.B.
Pujara

V/s.

Respondent : Uttar Gujarat Vij Company Limited
Division Office, Near Thermal Power Station,
Railway Crossing, Pethapur Road,
Gandhinagar - 382041

Represented by : Learned Advocate Shri Anand Ganeshan with
S/Shri R.P. Raval and Kamal Sindhi

CORAM:

Shri K. M. Shringarpure, Member

Dr. M. K. Iyer, Member

Shri Pravinbhai Patel, Chairman

Date: 04/08/2015.

ORDER

1) The present petition has been filed by the petitioner seeking the following reliefs:

- (a) To hold and declare and direct that the electric connection No. HT 18088 of 1200 KVA of the petitioner is required to be treated as a permanent connection and it is required to be billed under HTP-I tariff instead of HTP-III tariff from the date of release of connection and that the respondent UGVCL is duty bound to refund the excess amount recovered by it from the petitioner along with interest equivalent to the bank rate, in accordance with Section 62 (6) of the Electricity Act, 2003, and that the respondent shall forthwith pay the said amount to the petitioner;
- (b) To clarify that the Tariff Order dated 31.03.2010 issued by the Commission for UGVCL in Case No. 992/2010 does not say that the HT connection of electricity for construction purpose shall be granted as a temporary connection only regardless of the period for which the connection is applied for by the consumer and that it shall be billed in the Tariff Rate HTP - III and not in Tariff Rate HTP- I even if the connection is applied for a period of not less than Two Years;
- (c) To clarify that the HT connection of electricity for the construction purpose applied for a period of Two Years and more is required to be billed in the

Tariff Rate HTP - I and not in Tariff Rate HTP - III as per the Tariff Order dated 31.03.2010 issued by the Commission for UGVCL in Case No. 992/2010;

(d) To quash and set aside the order dated 13-6-2014 passed by the Consumer Grievances Redressal Forum (CGRF) of the respondent in Complaint No. UG-01-006-2014-15 as well as the Order dated 22.09.2014 passed by the Electricity Ombudsman in Case No. 105/2014;

2) The brief facts mentioned in the petition are as under:

2.1. The petitioner is the HT consumer bearing Consumer No. 18088 of the respondent. The petitioner had applied for 750 KVA load power connection at the land of Survey No. 375 of Village: Dantali, Taluka and District: Gandhinagar, for construction purpose of its project of "Shantigram Township" with all the required documents on 21.08.2010/23.08.2010. The application was registered by the respondent on 21.09.2010. The petitioner paid Registration charges of Rs. 7500/- vide MR. No. 6231 dated 21.09.2010.

2.2. The petitioner had specifically agreed to take supply of energy for a period of not less than two years and it had also consented to follow all rules and regulations as per norms. Thus, the petitioner had agreed to take supply under proper agreement. The petitioner had nowhere stated that it was applying/requesting for temporary supply for the said connection.

2.3. The respondent vide letter dated 26.11.2010 issued estimate for a sum of Rs. 47,93,893/- as under :-

Sr. No.	Item	Amount (Rs.)
1.	Contribution towards cost of capital assets from DISCOM/Beneficiaries on Pro-rata basis (Non- Refundable)	637500
2.	Service Connection Charges	4,66,820
3.	Security Deposit	36,89,573
	Total	47,93,893

The respondent had issued the said estimate by considering the application to be for permanent connection. The petitioner paid the estimate on 09.12.2010. The petitioner also vide letter dated 11.12.2010 requested the respondent to execute an Agreement, as the supply was required for more than two years. However, the respondent declined to even accept the said letter. The supply was released on 25.01.2011.

2.4. The petitioner vide letter dated 25.07.2011 requested for additional load of 450 KVA. The estimate for the same was issued for Rs. 51,72,406/- vide letter dated 26-9-2011 with the following break up :

Sr. No.	Item	Amount (Rs.)
1.	Contribution towards cost of capital assets from DISCOM/Beneficiaries on Pro-rata basis (Non- Refundable)	382500
2.	Service Connection Charges	6200
3.	Security Deposit	4783706
	Total	5172406

The petitioner paid the said estimate on 31.12.2011. The supply was released on 13.02.2012.

- 2.5. However, instead of applying the Tariff of HTP-I, the respondent wrongly applied the Tariff of HTP-III (the tariff for temporary connection), on the ground that the purpose of supply was for construction. This was absolutely wrong and based on arbitrary interpretation of the provisions. It appears that the respondent was relying upon the instructions issued by the Chief Engineer (OP), UGVCL vide Letter No. UGVCL/REG/ TECH/GEN/SBT/1570 dated 07.07.2010 wherein it was stated that "For Construction purpose only temporary connection is to be given in respective tariff."
- 2.6. The said instruction was without any legal basis because as per Section 61 of the Electricity Act, 2003, the respondent is bound to obey the Tariff structure as decided by the Commission and the respondent has no authority in law to deviate therefrom. The correctly applicable tariff to the petitioner was Rate HTP-I which is defined in the tariff order dated 31.03.2010 as under:-

"RATE HTP-I:

This tariff will be applicable for supply of electricity to HT consumers contracted for 100 KVA and above for regular power supply and requiring the power supply for the purposes not specified in any other HT categories."

The definition of HTP-III tariff which was wrongfully applied to the petitioner is as under in the said tariff order. :-

"Rate HTP-III:

This tariff shall be applicable to a consumer taking supply of electricity at high voltage, contracting for not less than 100 KVA for temporary period. A consumer not taking supply on regular basis under a proper agreement shall be deemed to be taking supply for temporary period."

2.7. Moreover, the Chief Engineer (OP), UGVCL cancelled the aforesaid wrongful instruction vide letter No. UGVCL/REG/COM/GERC/08/232 dated 30.07.2013 in view of the clarifications in Tariff Order dated 16.04.2013, discussions in Electricity Supply Code Review Panel Meeting dated 31.05.2013, CGRF Order dated 10.06.2013 as also as per Legal Opinion dated 24.07.2013, and the following guidelines were issued for temporary connections.

"Temporary Supply :

Temporary is the period and not the purpose. Any consumer LT or HT who agrees to execute a two years agreement is to be provided with permanent connection irrespective of usage including construction and observing all the formalities of a permanent connection. In other words "A consumer not taking supply on regular basis under proper agreement shall be deemed to be taking supply for temporary period."

Such Permanent Connections are to be billed in respective tariff as per actual usage at the time of demand.

2.8. The petitioner again requested the respondent by letters dated 28.10.2013 and 20.03.2014 to execute Agreement for permanent connection. But the respondent did not execute the Agreement. The respondent replied by letter dated 07.11.2013 wrongfully stating that "Now for conversion to HTP-I tariff, you have to

register your application with application form, registration fees, and necessary documents." As a matter of fact, this was not required to be done by the petitioner again because the petitioner had already complied with the said requirements in the inception.

2.9. The petitioner therefore approached the Consumer Disputes Redressal Forum (CGRF) of the respondent with a complaint dated 17.04.2014 which was registered as Case No: UG-01-006-2014-15. The CGRF wrongfully disposed of the said complaint by order dated 13.06.2014.

2.10. The petitioner therefore approached the Electricity Ombudsman by way of Representation dated 16.07.2014 which was registered as Case No. 105/2014. The Ombudsman dismissed the petitioner's representation by order dated 22.09.2014 on erroneous grounds, inter alia observing that (1) the agreement was not entered into between the Appellant and the distribution Licensee in terms of which the contract demand was fixed at 750 KVA (later on 1200 KVA), (2) The appellant wanted to be shifted to and categorized under HTP-I tariff, not HTP-III tariff, as provided in Clause 3.5 of GERC (Electricity Supply Code and Related Matters) Regulations, 2005, whether the appellant should be classified under HTP-I tariff instead of HTP-III tariff is a dispute falling under exercise of tariff determination, (3) The Electricity Ombudsman has no jurisdiction to entertain a representation from HT consumer

for change of one category, for the purpose of tariff determination, to another category.

2.11. The CGRF and the Ombudsman both rejected the petitioner's complaint and representation on the ground of lack of jurisdiction. In view of the law laid down by the Appellate Tribunal for Electricity by the Judgment dated 21.03.2011 in Appeal No. 181/2010, it is for this Commission to redress the petitioner's grievance in the manner laid down in the said Judgment. Hence, the petitioner approached the Commission by way of the present petition.

2.12. The impugned action of the respondent licensee is ex-facie arbitrary and discriminatory and clearly contrary to the Tariff Order dated 31.03.2010 issued by the Commission in Case No. 992/2010 in respect of the respondent licensee UGVCL. The said tariff order nowhere says that the supply for construction purpose would be given as temporary connection only regardless of the period for which it is requested/applied. The tariff order also does not say that for construction purpose, the applicable tariff is HTP-III. As a matter of fact, as per the tariff order, Rate HTP-I tariff is applicable for supply of electricity to HT consumers contracted for 100 KVA and above for regular power supply and requiring the power supply for the purposes not specified in any other HT categories. The present petition squarely falls within the applicability of the said tariff Rate HTP-I.

2.13. Moreover, as per the tariff order, Rate HTP-III tariff is applicable to a consumer taking supply of electricity at High Voltage, contracting for not less than 100 KVA for temporary period. A consumer not taking supply on regular basis under a proper agreement shall be deemed to be taking supply for temporary period. The present petition does not fall within the applicability of this tariff Rate HTP-III because it has not been contracted for temporary period and because it is taking the supply on regular basis. So far as the Agreement is concerned, the petitioner has from the beginning requested/insisted for executing the proper agreement but the respondent did not accept the request of the petitioner on the ground that for the Construction purpose supply can be given only as temporary connection. The said ground has no legal basis at all. Therefore, the petitioner cannot be penalized for such illegal action/inaction of the respondent licensee.

2.14. The respondent is the only distribution licensee in the area of the petitioner and because of such monopoly of the respondent, the petitioner is compelled to obey and implement the wrongful practice and procedure imposed by the respondent even though they are contrary to law and in violation of the Regulations framed and tariff orders issued by the Commission as in the present case. Having no option and to avoid stoppage of work, the petitioner was compelled to accept and follow the respondents illegal diktats. The impugned action of the respondent is based on arbitrary interpretation of the provisions and hence liable to be quashed and set aside.

2.15. The instruction contained in the CE (OP)'s letter dated 07.07.2010 to the effect that "For Construction purpose only temporary connection is to be given in respective tariff" had no legal basis and hence, the same could not be made applicable to the petitioner.

2.16. Moreover, on realizing the mistake, the said instructions came to be quashed by the very same authority - CE (OP) vide letter dated 30-7-2013 which has vindicated the stand of the petitioner that the respondent's action of treating the power supply for construction activity as of "Temporary" type is erroneous and not as per the Commission's norms. The said clarification/rectification would and should apply from the inception as if the instruction dated 07.07.2010 did not exist, and the injustice caused to the petitioner due to such misinterpretation must be redressed.

2.17. The definition and procedure prescribed for temporary construction by the Commission under Regulations by Notification Nos. 8 and 9 of 2005 vide Clause 2.1 (m) and 2.1 (xvii) respectively have not been followed by the respondent and it has continued billing under HTP-III instead of HTP-I. The definition of "Temporary Service" reads as under:-

"Clause 2.1 (m)/ 2.1 (xvii):

"Temporary Service" means supply of electricity will be given initially for a period not exceeding one month subject to review for further extension in accordance with the classifications of installation for purpose of permanent supply."

The petitioner had neither applied nor obtained the supply of electricity for a period not exceeding one month but it has applied and obtained the supply of electricity for a period of more than two years. The petitioner therefore cannot be billed in HTP-III tariff but the petitioner is required to be billed in HTP-I tariff.

2.18. The respondent has issued the estimate of Rs. 47,93,893/- as per the rules and procedures adopted for a permanent connection. In case of a temporary connection, such estimate would be of much lesser amount and the amount is being accepted as Deposit and such Deposit is settled and refunded when the connection is disconnected before a period of two years as per Clause (xi) and (xii) of Chapter VII of GERC Notification No. 9 of 2005 .

2.19. The petitioner had never requested for the connection/supply for a "period not exceeding one month" because the purpose was the development of a very large township having huge construction work and therefore the connection for a period of less than one month would have been absurd and irrational, and therefore knowing full well the petitioner had applied for connection/supply for a period of more than two years.

2.20. Moreover, the respondent had neither offered nor informed the petitioner that the connection would be for a period of less than one month subject to review, which means that the respondent was also aware that the connection was not for a temporary period. If it was for a temporary period then the petitioner would have

been required to make application every month for extension of time period of the connection. No such procedure was followed nor ever demanded by the respondent for the connection in question.

2.21. Moreover, the respondent has been billing the petitioner the Meter Charges at Rs. 750/- in the monthly bills since the very date of supply which also shows that it is for permanent supply as per the table for Meter Charges laid down in Clause No. 8.2 (D) of the GERC Notification No. 9 of 2005 which is reproduced hereunder :

For Permanent Supply:

Sr. No.	Particulars	Charges
1	Hire of single-phase meter	Rs. 10/per meter/month
2	Hire of three-phase meter	Rs. 30/per meter/month
3	Hire of demand meter or special type of meter for LT consumer	Rs. 225/ per meter/month
4	Hire of time switch with or without KWH meter.	Rs. 225/ per meter/month
5	Hire of HT/EHT metering equipment's	Rs. 750/ per meter/month

For Temporary Supply:

Sr. No.	Particulars	Charges

1	Hire of single-phase meter	Rs. 15/per meter/month
2	Hire of poly-phase meter (3- phase)	Rs. 60/per meter/month
3	Hire of HT/EHT metering equipment's	Rs. 1500/per meter/month

2.22. The respondent is wrongly referring to Clause 12.1 of GERC Notification No. 10/2005 because the said regulation is for Standard of Performance of Distribution Licensee and not for the definition of the purpose/activity.

2.23. Though from the beginning, the petitioner had demanded/requested for permanent connection for a period of not less two years the respondent has unilaterally and wrongfully treated the supply of electricity as temporary connection, in total disregard of the Regulations and the Tariff Order. The various features of permanent connection are that the tariffs are category-wise such as for Residential, Commercial, Industrial, Agricultural, Water-works etc. calculated/ determined by the Commission considering the cross subsidy charges, the fixed based number of connections in each category and % increase every year etc. and other principles laid down in the statutory provisions. The petitioner also submitted that the service connection charges and security deposits are non-refundable at the time of disconnection offered by the consumer in respect of permanent connections. Such is not the position in respect of temporary supply, which is for a temporary period of less than one month and

certainly less than two years, there is no question for payment of minimum bill for every month, it is billed under the one uniform tariff LTP-IV for LT connections of less than 99 KW (100 KVA) and HTP-III for HT connections of 99 KW (100 KVA) and above. There is no separate category-wise tariff such as for Residential, Commercial, Industrial, Agricultural, Waterworks etc. in respect of temporary supply. The service connection charges and security deposits are collected as deposit and it is finalized after disconnection and the remaining amount is refunded to the consumer. The Licensee has no fixed numbers of temporary connections and there is no uniform progressive % increase for calculation of uniform revenue to fix the tariff charges. No cross subsidy charges are taken into consideration while deciding the said tariff by the Commission

2.24. Considering all the aforesaid aspects, the petitioner's connection can never be treated as temporary connection and it is required to be treated as a permanent connection being for a period of more than two years and hence, the applicable tariff is HTP- I and not HTP- III.

2.25. Moreover, to obtain permanent connection or temporary connection is the choice of the consumer and the licensee cannot compel the consumer to have the particular type of connection. The connection for construction purpose has nothing to do with the tariff category of HTP-I or HTP - III. Whenever any connection is demanded for a period of more than two years and the consumer has shown willingness to execute the Agreement to pay the minimum bill it is a

permanent connection and it may be billed under the appropriate category. The petitioner was always ready to execute the agreement for a period of not less than two years and as a matter of fact the connection has continued for a period of more than two years.

2.26. The petitioner has never requested to change the connection from one tariff category to another, but it has requested to apply the correct tariff rate HTP- I from the beginning as against the wrongfully applied tariff rate HTP- III. The Electricity Ombudsman has jurisdiction in the matter of "the wrong application of a category at the initial stage by the licensee with an intention to collect more money from consumer under higher tariff category." The Electricity Ombudsman does have the jurisdiction to direct the change of the incorrect tariff category applied by the licensee in respect of a consumer to the correct tariff category, as per Clause 3.5 of the GERC Notification No. 11 of 2005. However, the Ombudsman has held that he has no jurisdiction in view of the judgment of the Appellate Tribunal for Electricity in Appeal No. 181/2010. It is therefore for this Commission to redress the petitioner's grievance in accordance with the said judgment of the Appellate Tribunal for Electricity, by exercising the powers under Sections 61, 62, 64, 86 and other applicable provisions of the Electricity Act, 2003.

2.27. For the aforesaid reasons and even otherwise, the impugned illegal action of the respondent in treating the petitioner's connection for construction purpose as a temporary connection even though it is for a period of more than

two years and in applying the tariff category rate HTP-III instead of the tariff category rate HTP-I is liable to be quashed and set aside as being patently arbitrary, discriminatory, high handed, irrational, bad in law, null and void, contrary to the letter and spirit of the Electricity Act, 2003 and the Regulations made by the Commission, contrary to the letter and spirit of the Tariff Orders issued by the Commission, without jurisdiction, without authority of law, suffering from the vice of non-application of mind, malafide, lacking in bonafides, violative of principles of natural justice, equity, fair play, good conscience and even otherwise contrary to law. The respondent who has wrongfully recovered the amount from the petitioner in excess of the tariff determined by the Commission under Section 62 of the Electricity Act, 2003 is required to be directed to refund such excess amount along with interest equivalent to the bank rate as per the provisions of Section 62 (6) of the Electricity Act, 2003 .

- 3) The respondent filed a preliminary reply dated 9.03.2015 and submitted that the present petition is not maintainable because the order of CGRF and Electricity Ombudsman cannot be challenged before the State Commission. Section 42 (5) to (7) of the Electricity Act, 2003 constitute a separate mechanism for redressal of consumer grievances and there is no provision for any appeal against or revision of the orders of CGRF and Electricity Ombudsman to be filed with or sought from the Commission.

Section 42 (5) and 42 (6) of the Electricity Act, 2003 which is produced as under:

“

Section 42: Duties of distribution licensee and open access

.....

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

.....”

3.1. The respondent has relied upon the following judgements of Supreme Court of India and the Hon'ble APTEL in support of its arguments:

- a. BSES Rajdhani Power Limited V/s Delhi Electricity Regulatory Commission & Anr (Judgement dated 30.03.2009 in Appeal No. 181 of 2008);
- b. M/s. Polyplex Corporation Limited V/s Uttaranchal Power Corporation Limited, (Judgement dated 30.03.2007)
- c. Dakshin Haryana Bijli Vitran Nigam Limited V/s DLF Services Limited, 2007 APTEL 356;

- d. Dakshin Haryana Bijli Vitran Nigam Limited V/s Princeton Park Condominium, 2007 APTEL 764;
- e. Maharashtra State Electricity Distribution Company Limited V/s Lloyds Steel Industries Limited AIR 2008 SC 1042, para 7.

3.2. It is submitted that the Petitioner cannot seek any relief with respect to setting aside the Order dated 13/06/2014 passed by the Consumers Grievances Redressal Forum or the Order dated 22/09/2014 passed by the Electricity Ombudsman. The petitioner has to seek its remedy by way of a writ petition before the Gujarat High Court and not before this Commission. The petitioner, under the garb of challenging the tariff classification cannot indirectly challenge the Orders dated 13/06/2014 and 22/09/2014. The petition, therefore, is not maintainable in the present form and needs to be amended at the very least by the Petitioner.

3.3. The respondent submitted that the petition is also not maintainable in view of the Order dated 22.03.2011 of Hon'ble APTEL in Appeal 181 of 2010, the ratio of which is against the case sought to be set up by the petitioner. The relevant extract from the order of Hon'ble APTEL are as under -

“

Para 16 (iii)-

"At the same time, the Commission has no jurisdiction to adjudicate upon

a petition of an individual consumer and give relief to only such individual consumer by conscious distraction from the tariff order."

....."

In view of the clear ratio laid down as above, the issue is squarely covered and a contrary petition may not be admitted by this Commission.

3.4. It is submitted that even perusal of each of the correspondence between the parties shows that the petitioner applied for temporary power supply for its unit located at Dantali and it was clear that the Petitioner sought for and was granted supply of power under "Temporary HT category" in terms of the tariff classification by the Commission in the successive tariff orders. The billing to the Petitioner has also been as per the tariff applicable for temporary HT category i.e. HTP-III. A perusal of the letters of the Petitioner also shows that the even when the addition in load was sought for the said connection by the petitioner it is mentioned by the petitioner that for the connection billed in HTP-III additional load should be granted. Therefore, there is no question of charging any other tariff or categorizing the Petitioner under any other tariff category.

3.5. In view of the above submission, the respondent submitted that the present petition is not maintainable and the same is required to be rejected and disposed off by the Commission.

- 4) The matter was kept for hearing on 10.03.2015 and 18.04.2015 on issue of maintainability of the petition.
- 5) Learned Advocate Shri G.K. Prajapati, on behalf of the petitioner, reiterated the facts as mentioned in para 2 above.
- 5.1. He further submitted that the petitioner had not applied for temporary connections. The petitioner had specifically agreed to take supply of energy for a period of not less than two years under agreement. The petitioner had also provided all the documents as were required for permanent connection, viz, Village Form No. 7/12 for all the Survey Numbers, orders of Non-Agriculture Permission and Site Plan, etc and UGVCL individually checked and verified the same. There is no such requirement for temporary connection,
- 5.2. He submitted that the respondent issued estimate for a sum of Rs. 47,93,893/- by letter dated 26.11.2010. Though in the said letter it was stated in the Subject that the estimate was for catering temporary power, as a matter of fact the estimate was for a permanent connection and not for a temporary connection. The petitioner paid the estimate amount on 09.12.2010. Exactly similar procedure was adopted when the petitioner requested for additional load of 450 KVA by application dated 25.07.2011. The estimate of Rs. 51,72,406/- was issued by the respondent vide letter dated 26.09.2011 and the petitioner paid the said estimate on 31.12.2011.

5.3. He also submitted that as far as the requirement of agreement between the consumer and the distributor licensee is concerned, there is clear cut provision in Regulation 4.3 of the Supply Code. As per the said resolution it is not necessary for the applicant to enter into an agreement separately and it is sufficient for the applicant to state in the application itself that the applicant is accepting the terms relating to tariff and other conditions of Supply Code. Therefore, when the petitioner has stated in the application itself , in paragraph (b) that *"I/We hereby agree to take supply and pay for the said energy, service connection and other dues including the deposit of such security as may be demanded in accordance with the rates and conditions of supply in force from time to time and further declare and agree to take supply of energy for the under mentioned purpose for my/our bonafide use for a period of not less than two years from the date of commencement of supply"*, there was no necessity for a separate agreement to be entered into. Still, the petitioner repeatedly insisted for entering into the agreement but the respondent did not accede to such request. It is therefore not open for the respondent to take advantage of its own wrong or its own action/inaction and to plead that the petitioner cannot avail of HTP-I tariff merely because the agreement was not entered into.

5.4. The respondent, a distribution licensee, is duty bound to implement the tariff order issued by the Commission in its letter and spirit and it has no authority in law to deviate therefrom or to act contrary thereto by issuing any internal guidelines or circulars. In the present case, as per the applicable Tariff Order issued by the

Commission, the petitioner was required to be billed as per HTP-I Tariff, but the respondent wrongfully billed the petitioner as per HTP-III Tariff by treating the petitioner's connection as a temporary connection, merely because of the internal circular/letter dated 07.07.2010 laying down general guidelines issued by the Chief Engineer (OP) instructing in Point No. 8 that "For Construction purpose only temporary connection is to be given in respective tariff ". However, the said instruction at Point No. 8 came to be quashed by the very same authority by another internal circular/letter dated 30.07.2013, the relevant paragraph of the same is reproduced here under:

"....

Temporary is the period & not the purpose. Any consumer LT or HT, who agrees to execute a two years agreement, is to be provided with permanent connection irrespective of usage including construction, after observing all the formalities of a permanent connection. In other words "A consumer not taking supply on regular basis under proper agreement shall deemed to be taking supply for temporary period".

....."

It is pertinent that the aforesaid guidelines were issued "in view of clarifications in Tariff order dated 16.04.2013, discussions in Electricity Supply Code Review Panel Meeting dated 31.05.2013, CGRF order dated 10.06.2013 & also as per legal opinion dated 24.07.2013" as stated in the said letter itself. Further, It becomes crystal clear from the said letter dated 30.07.2013 that the earlier instruction at Point No. 8 in the letter dated 07.07.2010 was without any legal

basis and without any authority of law. Therefore, the respondent on its own ought to have rectified the wrong committed by it in treating the petitioner's connection as a temporary connection and in billing the petitioner as per HTP-III Tariff instead of HTP-I Tariff, because the petitioner had already paid the estimates which were worked out for a permanent connection only. The respondent also ought to have entered into the necessary agreement with the petitioner for which the petitioner had been insisting from the beginning. However, that was not done.

5.5. In the similar facts and circumstances, CGRF UGVCL, had passed order in the case of one M/s. Shantikrupa Estate Private Limited and UGVCL had implemented the same. Therefore, the petitioner also approached the CGRF on 17.04.2014. But, CGRF did not redress the grievance of the petitioner and disposed of the application by order dated 13.06.2014. Aggrieved by non-redressal of the petitioner's grievances by CGRF, the petitioner made representation dated 16.07.2014 to the Electricity Ombudsman but he also disposed of the petitioner's representation/application by order dated 22.09.2014 by wrongfully holding that whether the petitioner should be classified under HTP-I Tariff instead of HTP-3 Tariff is a dispute falling under exercise of tariff determination and that the Electricity Ombudsman has no jurisdiction in the matter. Therefore, the petitioner has approached the Commission by way of the present petition,

5.6. He further submitted that the respondent, a distribution licensee, is illegally recovering higher price and charges from the petitioner by billing it under HTP-III category instead of billing under HTP-I category in accordance with the tariff determined by the Commission under Section 62 of the Electricity Act, 2003. Under Section 62(6) of the Electricity Act, 2003, if any licensee or a generating company recovers a price or charge exceeding the tariff determined under Section 62, the excess amount is recoverable by the person concerned along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee. Hence, the Commission has jurisdiction to entertain the present petition.

5.7. He submitted that as per regulation 3.62 of GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2011, the Commission has Suo-Motu Powers to take cognizance of any matter that is pending before or has been disposed of by the Ombudsman, where it deems fit to do so, and the Commission may, pass orders reversing the orders of the Ombudsman. Moreover, in sub-clause (iii) it is specifically stated that "The Commission shall have the same powers and functions as the Ombudsman under these Regulations in relation to any matter over which it takes suo motu cognizance". It is also provided that the Commission may by order confer upon itself additional powers as may be necessary for it to effectively decide any matter of which it has taken suo motu cognizance under this Regulation. It is well settled legal position that when there are suo motu

powers to do anything, the aforesaid powers can always be exercised on the particular matter being brought to the notice of the concerned authority by any person, interested or otherwise. Hence, in the present case the Commission would be well within its rights to exercise even suo-motu powers. Even the observations of the Hon'ble APTEL in its judgement and order dated 21.03.2011 in Appeal No. 181/2010 support this petition.

5.8. Moreover, under Section 86(1)(i) of the Electricity Act, 2003, the State Commission is obliged to discharge the functions of specifying and enforcing standards with respect to quality, continuity and reliability of service by the licensees. In exercise of such functions, the Commission has already laid down the Standards of Performance by the Licensee by way of Notification dated 31.03.2005. The Commission has also issued Notification Nos. 8/2005 and 9/2005. In Notification No. 8/2005 as well as in Notification No. 9/2005, the "Temporary Service" has been defined as under:

"Temporary Service" means supply of electricity will be given initially for a period not exceeding one month subject to review for further extension in accordance with the classifications of installation for purpose of permanent supply."

In the petitioner's case, the supply of electricity was not given initially for a period of less than one month nor it was subjected to any review for further extension beyond one month. This means that, in effect and substance, the petitioner was not granted "Temporary Service" but it was granted permanent connection. The Commission has therefore jurisdiction to entertain the present

petition and to issue appropriate directions.

- 5.9. Moreover, the respondent levied even the Meter Charges also from the petitioner as per the permanent supply and not as per the temporary supply as laid down in Clause 8.2 of GERC Notification No. 9/2005. The respondent has been billing the petitioner at Rs. 750/- as Meter Charges in the monthly bills since inception of supply which is for the permanent supply only.
- 5.10. The fact that the estimates issued to the petitioner and paid by the petitioner are not for a temporary connection but they are for a permanent connection is also evident from the comparison of the various estimates given to the petitioner as well as to others, prior to the Circular dated 07.07.2010 and after the Circular dated 30.07.2013.
- 5.11. He also submitted that prior to the respondent's internal circular dated 07.07.2010 and after the circular dated 30.07.2013, permanent connections for construction purposes were being given/released by the respondent under HTP-IIA/ HTP-I. It is only during the period between the respondent's two internal circulars that the respondent adopted the wrongful practice of levying temporary connection tariff — HTP-III for connections for construction purposes, without any legal basis and contrary to GERC regulations/instructions. Tariff HTP- II A was subsequently merged into tariff HTP I by the Commission from 01.04.2010.

5.12. After the issuance of the Circular dated 30.07.2013, no fresh application is required to be made by the petitioner and the petitioner cannot be compelled to pay any fresh estimate because all the charges of estimates as already paid by the petitioner are as per the permanent connection only. The petitioner is also relying upon the recent judgement of Hon'ble Gujarat High Court dated 18.04.2015 in SCA No. 7850 of 2014 and allied matters.

5.13. In view of the above submissions, he submitted that the Commission has jurisdiction to adjudicate the present dispute and accordingly, the present petition is maintainable. Therefore, the Commission may admit the present petition and allow the same with appropriate costs in the interest of justice.

6) Learned Advocate Shri Anand Ganesan, on behalf of the respondent, reiterated the facts as mentioned in para 3 above. He further submitted that the petitioner by way of the present petition is challenging the order dated 13.06.2014 of CGRF and order dated 22.09.2014 of Electricity Ombudsman before the Commission, which is not permissible.

6.1. He submitted that the present petition is ex-facie not maintainable since the Commission is not empowered to hear appeals against the orders of CGRF and Electricity Ombudsman. It is submitted that the Commission is not sitting in an appellate jurisdiction under Sections 42 (5) -(7) of the Electricity Act, 2003,

but the Commission is a creature of statute and its functions are enumerated in Section 86 (1) (f) of the Electricity Act, 2003.

6.2. He submitted that Section 42 (5) to (7) of the Electricity Act, 2003 constitute a separate mechanism in itself. The complete mechanism for redressal of consumer grievances is provided in the Electricity Act and there is no provision for any appeal against or revision of the orders of CGRF and the Ombudsman to be filed with the Commission.

6.3. He further submitted that in the present case, the Petitioner cannot seek any relief with respect to setting aside the Order dated 13.06.2014 passed by the Consumers Grievances Redressal Forum or the Order dated 22.09.2014 passed by the Electricity Ombudsman. The Petitioner has to seek its remedy by way of a writ petition before the appropriate High Court and not before this Commission. The Petitioner, under the garb of challenging the tariff classification cannot indirectly challenge the Orders dated 13.06.2014 and 22.09.2014 respectively.

6.4. He further submitted that the decision of the Hon'ble High Court in the case of Executive Engineer V/s Shantikrupa Estate Private Limited, in SCA No. 7850 of 2014 dated 05.02.2015 rather than supporting the case of the Petitioner, is on the proposition that the Consumer Forum and the Ombudsman are the appropriate forum for redressal of the grievances and the Commission has no jurisdiction in the matter. In fact, the specific objection taken by the

distribution licensee was that the matter should be heard by the Commission, which was rejected by the Hon'ble Gujarat High Court. The relevant portion of the said judgement is reproduced as under:

"3. Lengthy and elaborate submissions have been advanced by learned counsel for the respective parties which are briefly summarized herein below.

.....

3.6 The CGRF has no jurisdiction to decide the dispute in respect of the tariff applicable to a consumer or class of consumers who have to approach the GERC. The impugned orders of the CGRF have been passed without jurisdiction. As per the provisions of Section 42(5) and 42(6) of the Act, it is clear that the CGRF has no power to decide a dispute regarding change of category. In another case, the CGRF has concluded that the Forum has no jurisdiction. This decision has not been challenged by the respondent Company.

3.7 In another case, being Appeal No.181 of 2010, (between two different parties) the GERC has held that the CGRF or the Ombudsman has no jurisdiction to entertain a petition for change of category, for the purpose of tariff determination to another category.

3.8 In Special Civil Application No. 1038 of 2004 and allied matters, the learned Single Judge allowed the petitions and held that only the GERC can classify the consumers. The DISCOMs filed Letters Patent Appeals. The Division Bench granted interim relief in the said Letters Patent Appeals. This order of interim relief was challenged by the consumers before the Apex Court. While disposing of the Special Leave Petition, the Apex Court directed the consumer to pay the current bills as per HTP-II(A) and restrained the DISCOM only from recovering arrears.

.....

37. On the other hand, the learned advocate for the petitioner has contended that the CGRF has no jurisdiction to pass the impugned orders as, according to the petitioner, the dispute is in respect of the tariff applicable to a consumer or class of consumers, which can only be decided by the GERC. In support of this contention, reliance has been

placed upon the order of the GERC in Appeal No. 181 of 2010, (between two different parties). As per the learned advocate for the petitioner, the CGRF or the Ombudsman has no jurisdiction to entertain a petition for the change of category, for the purpose of tariff determination, to another category. Per contra, the respondent Company has submitted that in petition No. 1228 of 2012 preferred by it before the GERC, the GERC directed the respondent Company, by an order dated 04.09.2012 to approach the CGRF, as the dispute is a consumer dispute. It is submitted that this order has not been challenged by the petitioner, therefore, it cannot be said that the CGRF has no jurisdiction to entertain the grievance of the respondent-Company.

38. In order to examine the rival contentions, it would be necessary to determine the nature of the dispute between the parties; whether the dispute is regarding change of tariff from one category to another as submitted by the petitioner, or whether it is a billing dispute regarding the application of the appropriate tariff, as per the Tariff Orders of the GERC, to a permanent connection as sought by the respondent Company.

39. The determination of tariff is within the domain of the GERC, as per Section 62 of the Act. The Tariff Order of the GERC has been placed on record, at pages 222 to 226 of SCA No. 7850 of 2014. As per the said Tariff Order, HTP-III Tariff is as follows:

"12.0 RATE HTP-III

*This rate shall be applicable to a consumer taking supply of electricity at high voltage, contracting for not less than 100 KVA **for temporary period. A consumer not taking supply on regular basis under a proper agreement shall be deemed to be taking supply for temporary period.***

HTP-I Tariff has been described as follows:

"10.0 RATE HTP-I

This tariff will be applicable for supply of electricity to HT consumers contracted for 100K VA and above **for regular power supply** and requiring the power supply for the purposes not specified any other HT

categories."
(emphasis supplied)

40. From the above, it is clear that HTP-III is applied in cases where the connection is for a temporary period. A consumer not taking supply on a regular or permanent basis, under a contract agreement, shall be deemed to be taking supply for a temporary period. HTP-1 Tariff is applicable to a consumer taking **a regular power supply after executing a proper agreement.**

.....

47. After careful examination of the documents on record and the entire sequence of events, in the view of this Court, the dispute is not regarding the change of tariff from one category to another, but is essentially about applying the correct tariff, as determined by the CERC in its Tariff Order, to the permanent connection demanded by the respondent Company. The tariff has already been decided by the GERC. It is only a question of the applicability of the correct tariff in the case of the respondent Company that is in issue. The tariff applicable to a permanent connection is to be applied by the petitioner. It cannot disregard the Tariff Order and apply the tariff applicable to a temporary connection to the respondent Company, when the application for a permanent connection is found to be in order. The CGRF has stated, in paragraph-6.2 of its order dated 04.09.2012, that whether the documents submitted by the petitioner are relevant/adequate, or not, is to be decided by the petitioner (respondent therein) in accordance with law and relevant provision of regulations notified by the Commission. It is further held that if the respondent Company (petitioner therein) has any grievance on this account, it has to approach the CGRF instead of the Commission, **as it falls under a consumer dispute.** In this view of the matter, the GERC, the very body that determines the tariff, has itself directed the petitioner to approach the CGRF. This order has not been challenged by the petitioner. The objection of the petitioner that the CGRF has no jurisdiction to entertain the grievance of the respondent Company is, therefore, without any merit.

.....”

6.5. He submitted that in the above judgment, on merits it was held that where the supply was under an agreement, the supply would be on permanent basis and without an agreement on temporary basis. The said judgment applies on the merits also against the petitioner. However, for the purposes of the present question of maintainability, the Hon'ble High Court has laid down that it is within the sole jurisdiction of CGRF and Electricity Ombudsman, which the petitioner has availed in the present case.

6.6. He also submitted that the CGRF rejected the claim of the petitioner on the ground that there was no agreement between the parties. The same was also upheld by the Electricity Ombudsman, who also observed that if the petitioner is seeking new tariff categorization, the same cannot be done by the Electricity Ombudsman. The jurisdiction of CGRF and Electricity Ombudsman was to verify whether the correct tariff category is applied to the petitioner, which has been done.

6.7. In view of facts and circumstances as mentioned above, the issue is squarely covered and a contrary petition cannot be maintained before this Commission. Therefore, he submitted that the present petition is not maintainable and needs to be dismissed.

7) Based on the submissions made by both the parties, the issue that emerged for the decision of the Commission as to whether the present petition filed by the petitioner

is maintainable or not? Or whether the Commission has jurisdiction to adjudicate the dispute between the parties or not?

8) We note that the dispute between the parties is under which category of the tariff, i.e. HTP-I or HTP-III the petitioner is to be billed. The petitioner is billed under HTP -III category by the respondent stating that the petitioner had applied for 750 KVA load and submitted the documents specifically providing that the supply of energy is for a period not less than 2 years. The petitioner had taken the connection for construction purpose only and the respondent had released the same under the tariff category, i.e. HTP-III category.

8.1. It is undisputed between the parties that the petitioner is a consumer of the respondent, a distribution licensee and it is governed by the tariff determined by the Commission from time to time. The petitioner had filed a complaint before the CGRF, UGVCL bearing case No. UG-01-006-2014-15. CGRF in the above complaint passed an order dated 13.06.2014 dismissing the complaint of the petitioner for charging the petitioner under HTP-I tariff instead of HTP-III as prayed by the petitioner. Aggrieved of the said order, the petitioner had filed an appeal, i.e. Case No. 105 of 2014 in which Electricity Ombudsman passed an order dated 22.09.2014 and held that the Electricity Ombudsman has no jurisdiction to decide on the representation of HT consumer shifting and categorization from HTP-III to HTP-I category as provided in Clause 3.5 of GERC (Electricity Supply Code and related matters) Regulations, 2005 as it falls under the exercise of tariff determination.

8.2. The respondent contended that the order of the Electricity Ombudsman is challengeable before the appropriate High Court and not before the Commission. The petitioner has remedy available by way of filing writ petition before the Hon'ble High Court of Gujarat. The CGRF rejected the claim of the petitioner stating that the tariff applied by the respondent is correct and also held that there was no agreement between the parties. The Electricity Ombudsman also upheld the decision of CGRF and observed that the petitioner wanted a change in tariff category from HTP- III to HTP- I which is beyond the jurisdiction of the Ombudsman. The CGRF and Ombudsman have to verify whether the correct tariff category is applied to the petitioner or not which was verified by the above authorities and once the same has been carried out, the petitioner is not eligible to file a review petition before the Commission.

8.3. We note that the petitioner has prayed to quash and set aside the order dated 13.06.2014 passed by the CGRF in complaint no. UG-01-006-2014-15 and also the order dated 22.09.2014 passed by the Electricity Ombudsman in Case No. 105 of 2014. It is therefore necessary to refer the provisions of the Electricity Act, 2003 and regulations framed under it by the Commission viz. GERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2011. The Section 42 (5), (6) and (7) of the Electricity Act, 2003 read as under:

“

42. Duties of distribution licensee and open access

.....

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

.....”

Thus, as per the aforesaid sections whenever any consumer is aggrieved by the non-redressal of his grievances by the licensee, he may make representation to CGRF for redressal of his grievances. If, the consumer aggrieved against the order of the CGRF, he may approach to the Electricity Ombudsman by way of appeal for redressal of his grievances.

8.4. Regulation 3.44 of the GERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2011 provides as under:

“

3.44 The orders of the Ombudsman shall be final and binding on the parties. No party can file an appeal before the Commission against the order. However, the rights of Complainant and Licensee to file an appeal before the judicial bodies (including but not limited to the Appellate Tribunal for Electricity, Forums and Commissions established under the Consumer Protection Act, 1986, High Court, Supreme Court, etc.) shall remain protected.

.....”

As per the aforesaid regulation the decision of the Electricity Ombudsman is final and it can be challenged only before the Hon’ble High Court by way of the Writ Petition. Thus, the prayer for the petitioner to quash and set aside the order of CGRF and Electricity Ombudsman does not fall within the jurisdiction of the Commission.

8.5. We, further note that the respondent had relied upon the judgment of Hon’ble High Court of Gujarat dated 5.02.2015 in SCA No. 7850 of 2014, 7853 of 2014 and 7854 of 2014 in case of Executive Engineer O & M V/s Shantikrupa Estate Pvt. Ltd. and others. In the said order the petitioner had challenged the decisions of the CGRF, UGVCL, which held that the jurisdiction for adjudication for the dispute with regard to the tariff applicable to the petitioner is a consumer dispute and CGRF only has

jurisdiction in this regard. The relevant para of the decisions of Hon'ble High Court of Gujarat is reproduced below:

“

*47. After careful examination of the documents on record and the entire sequence of events, in the view of this Court, the dispute is not regarding the change of tariff from one category to another, but is essentially about applying the correct tariff, as determined by the CERC in its Tariff Order, to the permanent connection demanded by the respondent Company. The tariff has already been decided by the GERC. It is only a question of the applicability of the correct tariff in the case of the respondent Company, that is in issue. The tariff applicable to a permanent connection is to be applied by the petitioner. It cannot disregard the Tariff Order and apply the tariff applicable to a temporary connection to the respondent Company, when the application for a permanent connection is found to be in order. The CGRF has stated, in paragraph-6.2 of its order dated 04.09.2012, that whether the documents submitted by the petitioner are relevant/ adequate, or not, is to be decided by the petitioner (respondent therein) in accordance with law and relevant provision of regulations notified by the Commission. It is further held that if the respondent Company (petitioner therein) has any grievance on this account, it has to approach the CGRF instead of the Commission, **as it falls under a consumer dispute**. In this view of the matter, the GERC, the very body that determines the tariff, has itself directed the petitioner to approach the CGRF.*

This order has not been challenged by the petitioner. The objection of the petitioner that the CGRF has no jurisdiction to entertain the grievance of the respondent Company is, therefore, without any merit.

.....

*64. The cumulative result of the above discussion is that in light of the reasons stated hereinabove, this Court is of the considered view that the petitioner does not deserve the relief sought for in the petitions on the ground of suppression of material facts, acquiescence in implementing the impugned orders and not stating these facts in the petitions, as also on the merits of the petitions. **The impugned orders dated 18-1-2013 and 16-4-2013 in Special Civil Application No.7850 of 2014, dated 15-3-2014 in Special Civil Application No.7853 of 2014 and dated 13-2-2014 in Special Civil Application No.7854 of 2014 passed by the CGRF, do not suffer from any perversity or illegality, so as to warrant interference by this Court.***

.....”

In the above decision, the Hon’ble High Court of Gujarat decided that the dispute pertaining to applicable tariff is a consumer dispute and it falls within the jurisdiction of the CGRF and not the Commission. As the decision of Hon’ble High Court of Gujarat is binding to the Commission, we are of view that the Commission has no jurisdiction to decide the present dispute as it is a billing dispute.

- 9) In view of above observations we decide that the Commission has no jurisdiction to decide the present petition which involves a dispute pertaining to correct applicable tariff to the consumer as per the decisions of the Hon'ble High Court of Gujarat dated 15.02.2015 in SCA Nos. 7850 of 2014, 7853 of 2014 and 7854 of 2014.
- 10) With this, the present petition is not admissible before the Commission and the same is liable to be dismissed.
- 11) The present petition is disposed of accordingly.
- 12) We order accordingly.

Sd/-
[Shri K. M. Shringarpure]
MEMBER

Sd/-
[Dr. M. K. Iyer]
MEMBER

Sd/-
[Shri Pravinbhai Patel]
CHAIRMAN

Place: Gandhinagar
Date: 04/08/2015.