

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.

CASE No. 24 of 2001

**In the matter of MSEB Tariff rate applicable to streetlight services for
Murbad and Additional Murbad Industrial Areas and differential tariff recovery
through supplementary bill raised by the MSEB.**

**Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member**

ORDER

Dated: **February 11, 2003**

The Maharashtra Electricity Regulatory Commission, in exercise of the powers vested in it under Section 29 of the Electricity Regulatory Commissions (ERC) Act, 1998 and all other powers enabling it in this behalf, has vide its Order dated 5th May 2000, in Case No. 1 of 1999, determined the tariff for the supply of electricity to various categories of consumers, after considering the proposal submitted by the Maharashtra State Electricity Board (MSEB). Since then the Commission has also passed its second Tariff Order dated 10th January 2002 in Case No.1 of 2001 for the MSEB.

2. The Deputy Engineer, MIDC Sub-Division, Murbad submitted an application under affidavit dated 11.10.2001 and further supplemented on the date 9.11.2001 in the matter of Tariff rate applied by the MSEB to its streetlight services in Murbad and Additional Murbad Industrial Areas. The matter was admitted and heard before the Commission on 8th August 2002.

3. The MIDC submitted that it provides all the infrastructure facilities such as streetlights, water supply, roads, post office, MSEB office, Telephone office, etc., Streetlights are provided along the internal roads in Murbad and additional Murbad industrial areas those are in the jurisdiction of 'Grampanchayats'.

4. The energy bills for these street lights so far i.e. till April 2000, were being charged at a tariff applicable as per the MSEB tariff, under **class LD-6 (a)** of the Tariff Schedule and MIDC has been paying the same regularly. Recently the MSEB informed vide its letter-dated 4.7.2001 that the MIDC is **not categorised** under the '**Grampanchayats**' but it is a corporate body. Therefore the tariff is being charged for the street light category '**others**' as per applicable rate of tariff. The contention of the MIDC is that the said areas fall under the limits of the Gram Panchayat and the Tariff rate for street lights need to be charged under class LD-6 (a) of MSEB tariff schedule only as has been done in the past.

5. The Applicant further submitted that the Corporation regularly paid the MSEB bills and there never had been any arrears. He further submitted that the MSEB has, without any intimation or notice, raised a **bill dated 12.3.2001** including **arrear amount of Rs.3.48 lakhs for the period of September 1992 to December 2000**. He further submitted that the MIDC collects service charges, which itself is subsidized, for providing water, roads and streetlights & its maintenance, from its consumers as per the applicable rate approved by its HQ and it is now very difficult for the MIDC to collect this arrears for the period September 1992 to December 2000.

6. On a query from the Commission, the Applicant submitted that out of the total plots, about 70-80% are functioning in Murbad / Addl. Murbad MIDC areas. The rate for service charges is Re.1 per sq. meter per annum and which is applicable throughout the State and normally revised once in 3-4 years. To another query, as to whether the other MIDC areas are also facing similar problems, the MIDC official expressed unawareness on his part. MIDC Head Quarters representative also expressed his inability to throw any light in this matter.

7. The Applicant submitted that the issues have been discussed at various levels since **April 2001** without any solution. Unfortunately, the MSEB even refused to accept payment under protest and resorted to **thoughtless disconnection** on 29th September 2001 leaving the area under darkness for more than 3-1/2 months. Under this coercion the MIDC had to pay the bill, while approaching the Commission for its decision in the matter.

8. The Applicant further reinforced his submission by putting forward that:

- There has been a complete non-application of mind on the part of the MSEB in consideration of issues raised by the MIDC
- The failure on the part of the MSEB to put MIDC to notice including statutory notice in respect of disconnection effected.

- It is denied that the MSEB can recover retrospectively amounts by levying tariff rates unreasonably and retrospectively, though the MIDC has regularly paid the electricity bills.

9. In compliance to the Commission's directives inviting parawise remarks on the application of the MIDC, the MSEB submitted its say vide its letter dated 21st January 2002.

10. The MSEB representative while deposing submitted that there are three basic issues:

- Tariff Applicability:** Whether the tariff applicable to the Gram Panchayat areas can be made applicable to the MIDC, providing the services of streetlights. As per approved tariff order and subsequent tariff schedule along with Commercial circular, it gets established that the applicability of the tariff depends upon the use and type or class of the authority providing the said services as a civic amenity and not on the basis of its geographical location. In this case the MIDC is providing it for the benefit of its industrial consumers / entrepreneurs and hence they are charged under the rate, that is appropriate, justified and needs no reconsideration. Further the Honourable Commission approved the tariff, effective since May 2000. The contention of the Applicant to be categorised based on their location, therefore, is not sustainable and justified.
- Issue of Arrears:** He submitted that during the internal audit in 1996 by the MSEB the auditors pointed out the anomaly in the rate charged to the MIDC since November 1992 to March 1996. Accordingly the revised bill was raised from that period onwards. The matter was clarified to the MIDC officials, who disagreed with the arrear bill, during a meeting held on 23.10.2001. On their failure to settle the arrear due, the supply was disconnected on 29th September 2001 and restored after payment of both supplementary bill and other dues on 12.12.2001 – 13.12.2001.
- Issue of Time Limitation:** He submitted that MIDC cannot raise the issue of validity of the said supplementary bill, on the ground of time limitation, before the Honourable Commission and if so desired can opt to initiate other appropriate remedy in this regard [ref. Point No.12 of MSEB letter No.PR-3/Tariff/MERC/22619 dated 21.1.2002].

11. On a query regarding similar problem in other MIDC areas in the State, he submitted that no such case has been registered with the MSEB so far and, therefore, it is presumed that they

have been charged as per the tariff directives of the Commission. The MSEB official further submitted that the entire matter was earlier discussed on several occasions with the MIDC authorities for amicable resolution but to no avail.

12. The Commission enquired with the MSEB on (a) Why it took another four years (!) to raise the revised bill, which was pointed out in 1996 by the internal auditors, and (b) What is the internal check system to avoid such lapse and fix accountability? The MSEB official admitted a lapse on their part.

13. The Commission pointed out that as per the MSEB's Conditions of Supply, it cannot recover arrears with retrospective effect for more than six months in case of metering/billing dispute, as well as the built-in system for periodic check of the meter is lacking. The Commission further observed that while in this case the matter was not that of metering error and consequent billing dispute but of an administrative lapse on the part of the Board, who is expected to function in commercially oriented manner, to detect in time whether the rate applied is correct or not. Even after delayed detection by the audit team the respective department took four long years to take a corrective action that affects its revenue earning and consequent cash flow. Such matters cannot be so easily condoned simply on the basis of the MSEB admitting lapse on their part. It will be unfair and unjust to make the hapless consumer to face the inconveniences under duress of the MSEB.

14. On the question of non-acceptance of payment from the MIDC 'under protest', the Board representative further submitted that he would investigate the matter to take corrective measures in future. The Commission observed that this is another manifestation of the highhanded approach of the Board officials in the field, which may be unknown to the top management, making the customer repent but still continue in absence of any alternative. A patient hearing and willingness to address the genuine grievances of the consumer is all that the customer wants, which in fact can be the basis of success for the Boards business.

15. Observing the involvement of substantive legal points, which were not sufficiently argued during the hearing, the Commission vide its letter dated August 14, 2002 directed the MSEB to submit its comments on the issue of 'period of limitation' and the legal comments thereof in view of (i) section 26(6) of the Indian Electricity Act, 1910 "*Where any difference or dispute arises as to whether any meter referred to ...during such time, not exceeding six months,*

as the meter shall not, ... be conclusive proof of such amount or quantity” and (ii) Civil Procedure Code restricting the Period of Limitation to three years.

16. In compliance to the Commission’s letter dated 14th August 2002, the MSEB has submitted its response vide letter No. PR-3/MERC/Tariff/35653 dated 1st October 2002 submitted that

- (a) *“Neither the Limitation Act, 1963 nor any other relevant statutory provision prohibits or prevents the Board from claiming escaped billing from any consumer with retrospective effect, pertaining to the period which may extend beyond the period prescribed under the Limitation Act, 1963.”*
- (b) *The Civil Procedure Code does not prescribe any period of limitation, whereas the said provision exists in the Limitation Act, 1963 and as far as the Electricity Boards are concerned, the Section 60-A of the Electricity (Supply) Act, 1948 is more relevant in this regard.*
- (c) *The Action of the Board to issue supplementary bill having retrospective effect for valid reasons, **like escaped billing, wrong application of tariff, etc.**, therefore cannot be declared as illegal, only on the ground that the period of such supplementary bill extends beyond the period permissible under the Limitation Act, 1963.*
- (d) *Even if, just for the sake of arguments but without admitting the same, it is presumed for the time being that the Board cannot raise any supplementary bill pertaining to a period beyond the period prescribed under the Limitation Act, 1963, then also under Section 24 of the Indian Electricity Act, 1910, the Board has the right to disconnect power supply of the said consumer who has been issued such supplementary bill.*
- (e) *Such powers are vested with the Board under Section 24 of the Indian Electricity Act, 1910 and the Hon’ble Supreme Court in its judgement dated 24/01/1997, in the matter of M/s Swastic Industries v/s M.S. Electricity Board (Special Leave Petition Civil No.765 of 1997, A.I.R. – 1997 S.C; page no.1101) has clearly upheld these powers. The Hon’ble Supreme Court in the said judgement has specifically stated that, even though a claim might have been barred by Law of Limitation for which the Board cannot initiate recovery proceedings, but can always disconnect the power supply in exercise of power under Section 24 of the said Act of 1910.*
- (f) *In the said judgment, the Hon’ble Supreme Court has also observed that, issuing a supplementary bill for escaped billing cannot be considered a deficiency in service.*

17. The MSEB, further while citing the High Court judgement (AIR 1978, BOM 369 – M/s Bharat Barrel & Drum Manufacturing Co. Pvt Ltd v/s The Municipal Corpn. of Greater Mumbai) brought out that:

“The right to discontinue the supply of electricity is without prejudice to the licensee’s right to file a suit to recover the amounts, since the reason of disconnection of the supply the licensee will not necessarily obtain the amounts due from the consumer. It became necessary therefore to protect the licensee’s right to recover such amounts by ordinary civil action the defendant to the suit i.e. the consumer may have the defense of limitation open to any portion of the claim would not warrant such considerations being applied to the licensee’s right of discontinuance of supply for non-payment of the amounts owed to the licensee. The provision contained in Section 24(1) which enables the licensee to discontinue electric supply to a particular consumer is mainly by way of relieving the

licensee of the obligation on him to be found contained in S. 22 viz. to make supply of electricity on application to all consumes within the area of supply.”

18. The MSEB further submitted [ref. para 10 of letter dated 1st October 2002] that:

“The Section 26(6) of the Indian Electricity Act, 1910 will have no relevance as far as the issue under consideration of the Hon’ble Commission is concerned, since the said provision is applicable only in such cases, where there exists a dispute (between the Board and the consumer) about correctness of the meter. In such cases also, no time limitation regarding reference to be made to an Electrical Inspector has been prescribed, however once such reference is made, the Electrical Inspector can determine the assessment only for a period not extending beyond 6 months. In this regard, it is further to state that the Hon’ble Supreme Court in one of the matters have expressed that the said period of 6 months also needs to be increased by appropriate amendment to the said Section.”

19. The Commission observed that the following issues needed to be answered effectively while deciding on merit of this case:

- i) Whether the MSEB is within its legal right to issue supplementary bill having retrospective effect for varied reasons like escaped billing, wrong application of tariff, etc., for an unlimited period and not bound by the Limitation Act, 1963.
- ii) In case Limitation Act, 1963 prohibits or prevents the Board from claiming escaped billing from any consumer for retrospective effect, what should be the period, and whether the same is further limited by any of the provisions in Civil Procedure Code, besides Section 60 (A) of the Electricity (Supply) Act, 1948.
- iii) Does Sections 49 and 52 of the ERC Act 1948 give sufficient empowerment to the Commission to decide on the period of escaped billing pertaining to a period beyond the period prescribed under the Limitation Act, 1963 or the period prescribed under Section 26(6) of the IE Act, 1910.
- iv) For a bill disputed under the Period of Limitation, whether the MSEB still enjoys the right under the IE Act 1910 to disconnect the supply to its consumers who has been regularly meeting it’s obligations.

20. The Commission noted that the facts of the cases for the judgments cited by the MSEB are in the specific context of the Board’s legal right to raise supplementary bill arising out of the escaped billing due to error in meter or in billing and to disconnect the power supply as a legal means to exert pressure on the intentional defaulter for clearing his dues to a public utility.

Whereas here is the case where the customer has not failed in settling his bill raised from time to time based on the classification as per prevailing tariff schedule, and merely protested to a supplementary bill due to reclassification by the Board. In fact the gesture of paying “under protest” clearly reflects the intention of the customer. But the MSEB on the other hand after failing to put their house in order takes the high-handed approach of threatening the customer with disconnection and collect the dues in dispute under duress. The MSEB clearly fails in meeting its executive obligation and making the concerned accountable when it fails to raise supplementary bill for four long years in spite of audit team having reported the anomaly which in any way should have been detected by the commercial section as a part of its routine activity check.

21. The Commission sees the point in the argument of the applicant that it is not possible for the Board’s consumer to recover such arrears dues from his customers after such a long unreasonable span of time. It observes that the concept of “Period of Limitation” follows from such situation. The Commission also observes that the prevailing Law in electricity is silent on such time period of limitation to be considered under such cases where the utility has failed to perform its duty on time and expects the consumer to face the inconveniences and pay up silently under coercion i.e. the threat of disconnection to avoid further halt to his activity. The Commission observes that the section 52 of the ERC Act, 1998 sufficiently empowers it to deal in such matter.

22. The Commission does not see any merit in the applicants argument that he should be offered a tariff category based on his geographical location and therefore upholds the contention of the Board that the applicability of the tariff is based on the purpose for which the electricity is being used and not otherwise.

23. In light of the above observations the Commission directs the following:

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.

24. Accordingly, the bill issued to the MIDC should be corrected to ensure prospective recovery of dues from the date of communication about the reclassification.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

(Sanjay Kumar)
Secretary, MERC