

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 41 of 2002

In the matter of
Application dated 28th August 2002 filed by M/s Millennium Plastics, Mumbai
regarding Discriminatory Provisions in the Conditions of Supply
prescribed by the Maharashtra State Electricity Board (MSEB) relating
to maximum limit on connected load for Low Tension power supply.

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

ORDER

Dated: March 11, 2003

1. M/s Millennium Plastics, Mumbai, 28, Nav Nandanvan Inds. Estate, Mulund (West), Mumbai have petitioned the Commission on 28th August 2002, alleging “*discriminatory provisions in the Conditions of Supply of the Maharashtra State Electricity Board (MSEB) relating to maximum limit on the connected load for obtaining Low Tension power supply*”. The admissibility hearing was held on 18th February 2003. The Commission heard both parties on 18th February 2003 through their Counsel, and considered their written and oral submissions.

2. The Petitioner is a LT consumer of MSEB since February 2000, with connected load of 66 HP, and is engaged in the manufacture of plastic articles. With a view to expansion, and after obtaining other clearances, the Petitioner approached MSEB for increasing the connected load from 66 HP to 99 HP. However, under letter dated 13th May 2002, MSEB informed the Petitioner that “*as per CC No.624 dated 30.6.1999, Plastic Industries should avail supply on HT side only.*”

The provision for availing HP load by the industrial consumers at LT supply is not permissible for ice factory, cold storage, plastic industries and chemical industries.”

3. Condition 28 of MSEB's Conditions of Supply provides that Low Tension (LT) Industrial Consumers such as engineering and other industries could avail of LT supply upto 100 HP subject to the consumer installing LT Maximum Demand Meter having the facility to record kVA demand also, and would be billed as per the prevailing tariff rate. However, Ice Factories, Cold Storages, Plastic Industries and Chemical Industries are specifically excluded from this dispensation through an amendment in the Conditions of Supply effected in June 1999. The petitioner claims that, as a result, an arbitrary discrimination was introduced between manufacturers of plastic goods and other LT industrial consumers. Moreover, since those manufacturers of plastic goods who were already availing of the LT tariff for connected load exceeding 67 HP and upto 100 HP were not required by MSEB to switch to HT supply, MSEB are also discriminating between consumers using power for the same category of use. The new provisions were not applied even to those manufacturers of plastic goods whose applications were pending at the time of amendment to the Conditions of Supply.

4. The Petitioner contends that such discrimination in an arbitrary manner between consumers of the same class was bad in law. It also places an additional financial burden on the Petitioner even in comparison with otherwise similarly placed plastic goods manufacturers and other LT industries with LT power supply upto 100 HP. He also cited the discrimination persisting after taking over of the Thane Electric Supply Company by MSEB. Counsel for the Petitioner also submitted that Section 49 of the Electricity (Supply) Act, 1948 envisages that uniform provisions would be prescribed regarding power supply, and undue preference cannot be shown to certain consumers or class of consumers.

5. The Petitioner has approached the Commission in view of the orders of the High Court temporarily restraining MSEB from making any unilateral modifications in the existing Conditions of Supply without reference to the Commission.

6. MSEB submitted that Clause 28 of the Conditions of Supply prescribed the maximum limit of connected load for power supply on LT as 67 HP. However, the General Motive Power, i.e. industrial consumers had represented that this provision be relaxed, and that the maximum limit of connected load for power supply on LT be permitted upto 100 HP. It was contended that, though the connected load of certain types of industries was more than 67 HP, these industries do not require the entire load at one time and that, therefore, the actual load at any given time does not exceed 67 HP (50 kVA) due to low load factor. This argument was accepted by MSEB, and the provisions of Clause 28 were amended in January 1996 to permit General Motive Power consumers the option to avail of power on LT upto 100 HP provided maximum demand does not exceed 50 kVA. MSEB have stated that, while implementing these changes, they observed that the load factor of certain type of industries, including plastic industries, is comparatively high (near unity). When such industries avail of LT power for connected load exceeding 67 HP, the demand generally exceeds 50 kVA, which puts a strain on the distribution network. MSEB therefore further amended Clause 28 of the Conditions of Supply with effect from 1.6.1999 (i.e. prior to the establishment of the Commission) so as to exclude plastic and some other industries from the option to avail of LT supply for connected loads exceeding 67 HP and upto 100 HP. MSEB submitted that the denial of enhancement of connected load on LT to the Petitioner is strictly in accordance with the amended Conditions of Supply. It is open for the Petitioner to increase the connected load beyond 67 HP provided that such power supply is on HT.

7. Counsel for MSEB also submitted that the Commission, in its Orders 5th May 2000 and 14th February 2001, has restrained MSEB from making changes in the Conditions of Supply. Both these Orders have been appealed against in the High Court, who have directed the Board not to amend the Terms and Conditions without the Commission's prior approval pending disposal of the Appeals. The final hearing of these Appeals has been concluded. The judgement of the High Court is likely to be declared shortly.

8. MSEB have submitted that the impugned amendment to the Conditions of Supply has been made after due consideration of all legal and technical issues and cannot be termed as arbitrary. As far as the discrimination arising from the prospective application of the amendment to the Conditions of Supply effected from 1.6.1999 is concerned, MSEB stated that retrospective

application to those plastic industries already availing of LT supply exceeding 67 HP would have been bad in law and would violate existing contractual agreements between MSEB and these consumers. The Conditions of Supply, which earlier covered other, similarly placed consumers such as plastic industries, at the relevant time, were uniformly applied to all such consumers prior to the amendment. Even after the amendment, the provisions have been uniformly applied to all similarly placed consumers, but with prospective effect.

9. The Respondent, MSEB, have clearly stated the reasons for treating certain categories on a different footing while effecting the amendment to Clause 28 of the Conditions of Supply with effect from 1.6.1999, and it cannot be said that the amendment has been arbitrary. Regarding the element of apparent discrimination arising from the prospective application of the amendment, it is obvious that it could not have been applied to existing consumers with connected load exceeding 67 HP in the same category of industries. There is no discrimination in the application of the amendment between plastic goods industries applying for LT power supply exceeding 67 HP (upto 100 HP) subsequent to 1.6.1999. The Commission, therefore, finds no merit in the petition and dismisses it accordingly.

(Jayant Deo)
Member

(Dr Pramod Deo)
Member

(P. Subrahmanyam)
Chairman, MERC

(A.M. Khan)
Secretary, MERC