

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Center, Centre No. 1, 13<sup>th</sup> Floor, Cuffe Parade, Mumbai – 400 005.

**Case Nos. 10 [Maharashtra Chamber of Commerce & Industries, Mumbai]  
and 11 of 2000 [Akhil Bharatiya Grahak Panchayat, Pune]**

**IN THE MATTER OF**

**the validity of the Commercial Circulars and the Clauses of Conditions  
and Miscellaneous Charges for Supply of Electrical Energy  
issued by the Maharashtra State Electricity Board (MSEB)  
without prior approval of the Maharashtra Electricity Regulatory Commission  
(MERC).**

**Shri P. Subrahmanyam, Chairman  
Shri Venkat Chary, Member  
Shri Jayant Deo, Member**

**ORDER**

**Dated – February 14, 2001**

1. As the issues arising out of the above matters are similar, the Commission is passing this common order.

1.1 The Maharashtra Electricity Regulatory Commission (MERC), by an Order dated May 05, 2000 in Case No. 1 of 1999, directed that the Commercial Circulars issued by the Maharashtra State Electricity Board (MSEB) on terms and conditions of supply [*Conditions & Miscellaneous Charges for Supply of Electrical Energy effective from 1.1.1976 (Amended upto 31.7.1998)*] after the setting up of the Commission, without its approval, may be kept in abeyance and the approval of the Commission be obtained before they are put into effect. The Commission further directed that the MSEB should desist from issuing such circulars. The Commission further took the view that as per Section 29(4) of the Electricity Regulatory Commissions Act, 1998, MSEB should

observe the methodology and procedures specified by the Commission from time to time in calculating the expected revenues from charges it is permitted to recover and in determining the tariff to collect those revenues.

2. Further, the Commission observed that the tariff is dependent on the terms and conditions and cannot be separated under Section 52 of the ERC Act read with under Section 49 of the Electricity (Supply), Act, 1948. **Section 52 of the ERC Act, 1998**, states “*save as otherwise provided in Section 49, the provisions of this Act shall have effect notwithstanding anything inconsistent there with contained in any enactment other than this Act*”.

**Section 49 of Electricity (Supply) Act, 1948** reads as follows:

*“Provision for the sale of electricity by the Board to persons other than licensee. The Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs”.*

2.1 The Commission under section 29(2) of the ERC Act, 19198 has framed and notified, with effect from 27<sup>th</sup> December 1999, the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations 1999 (the said Regulations). Regulation 72 (2) of the MERC (Conduct of Business) Regulations provides “*No utility shall fix any tariff for intra-state transmission, distribution or supply of electricity and terms and conditions for the supply of electricity, without the general or specific approval of the Commission*”.

3. The Applicants in both the matters, (i) the Maharashtra Chamber of Commerce and Industry, Mumbai [Case No 10 of 2000], and (ii) Akhil Bharatiya Grahak Panchayat, Pune [Case No. 11 of 2000], have, among other things, alleged that the MSEB has not followed the Order of the Commission dated 5<sup>th</sup> May 2000 and have issued Commercial Circulars levying unfair and arbitrary charges as part of the terms and conditions of supply. It was also contended by the Applicants that the Booklet containing compilation of “Conditions and Miscellaneous Charges for Supply of Electrical Energy” issued by the MSEB to its consumers, have several instances of arbitrariness and violation of Clause VI of the Schedule of the Indian Electricity Act,

1910. The Applicants, therefore, requested the Commission to initiate suo-motu proceedings against the Respondent (MSEB) and check the continued violation by the MSEB of the Order passed by the Commission on 5<sup>th</sup> May 2000.

4. The MSEB in reply, contended that the Commission, in its Order of 5<sup>th</sup> May 2000 had directed “to keep in abeyance only such Circulars issued by the Board on Service Line Charges, Distribution Charges, Meter Rent, etc.”. They further submitted that the issue of billing the LT motive power consumer on the basis of sanctioned load instead of connected load, covered by the General Circular (Commercial) No.314 dated 6<sup>th</sup> August 1999 was outside the purview of the said Order and, therefore, has to remain in force in the absence of specific orders of the Commission.

5. The MSEB also raised the issue of the Commission’s jurisdiction. It was submitted that they had questioned the jurisdiction in the Review Application, in respect of which the Commission passed an Order dated 11.8.2000 for further hearing of the Review Application on 29.8.2000. After the hearing on 29.8.2000, the Commission disposed of the Review Application vide its Order dated 6.9.2000 admitting only certain limited points of the Review Application of the MSEB, which did not include the point regarding jurisdiction of the Commission. The final public hearing on the admitted points of the Review Application of the MSEB took place on 11<sup>th</sup> & 12<sup>th</sup> October, 2000 in the presence of consumer representatives, caveators, objectors, etc., and a Review Order was issued by the Commission on 13<sup>th</sup> December 2000. The Review Order dated 13.12.2000 does not deal with any matter relating to the Board’s power to frame general conditions governing power supply to consumers u/s 49 r/w Section 79 of the Electricity (Supply) Act 1948, as the same was already disposed of on 6.9.2000.

6. Finally, the MSEB further submitted that it could not withhold power supply to a prospective consumer only on the ground that the issue regarding the authority of the Board to levy and recover the Service Line Charges, etc., was under dispute. Therefore, the MSEB contended that they have continued to release power supply against the payment of Service Line Charges, etc. as per the scales prevailing prior to the setting up of the Commission and after obtaining an undertaking from such

consumers to pay such differential charges as may be determined by the appropriate Appellate Authority.

7. The Counsel on behalf of the MSEB informed the Commission that the MSEB is contemplating an appeal against the Order of the Commission though he could not say as to when the appeal would be filed. Regarding the terms and conditions contravening the principles laid down under Clause VI (3) of the Schedule of the Indian Electricity Act 1910, the Counsel was of the opinion that the violations, if any, could only be challenged in the High Court and does not fall within the jurisdiction of the MERC. **Clause VI (3) of the Schedule of the Indian Electricity Act, 1910**, provides as follows:

*“Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier [or as to the position of the meter board], or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-clause (1) , the matter shall be referred to an [Electrical Inspector] and decided by him”.*

7.1 In support of the right of the MSEB to fix the terms and conditions of supply, the Counsel of the MSEB quoted **para 15 of the Judgement delivered on 15.2.1995 by the Honourable High Court of Bombay in Writ Petition No.2364 of 1987** in the Case of Riddhi Siddhi Co-op Housing Society Limited vs the MSEB (Third Respondent). The above referred **para 15** states:

*“In our opinion, as held by the Karnataka High court, the provisions of Clause VI of the Schedule are not exhaustive and they can be lawfully supplemented in exercise of the powers under the Electricity (Supply), Act, 1948. However, assuming that there is some apparent inconsistency between the provisions of clause VI of the Schedule to the Indian Electricity Act and the power given to the Board under section 49 of the Electricity (Supply) Act, 1948, to supply electricity on such terms and conditions as it thinks fit, in view*

*of the provisions of section 70 of the Electricity (Supply) Act, the provisions of section 49 shall prevail.”*

7.2 However, the Commission took note of the view of the Honourable High Court as expressed in **para 16 of the above judgement** *“As stated earlier, this, however, will not permit the Board to put any arbitrary, unreasonable, or unfair conditions. However, whether a particular condition stands scrutiny of lawfulness, reasonableness, justness and fairness, would be a question of fact to be determined in each case”*.

8. The Counsel for the MSEB further argued that the MERC had no jurisdiction under Section 29 (6) of the Electricity Regulatory Commissions Act 1998 r/w Regulation 72 (2) of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations 1999 in the matter.

8.1. **Section 29(6) of the ERC Act, 1998** states as follows:

*“Notwithstanding anything contained in Section 57-A and 57-B of the Electricity (Supply) Act, 1948 (54 of 1948) no rating committee shall be constituted after the date of commencement of this Act and the commission shall secure that the licensees comply with the provisions of their license regarding the charges for the sale of electricity both wholesale and retail and for connections and use of their assets or systems in accordance with the provisions of this Act.”*

9. Most of the points raised in the Applications with respect to the Commercial Circulars are related to the charges payable for getting the connections. The method and manner in which such charges are to be levied is given in **Clause VI of the Schedule [Section 3, sub-section (2), clause (f)]**, of the Indian Electricity Act, 1910, *“which are the provisions deemed to be incorporated with, and form a part of, every license granted under part-II, in so far as they are expressly added to, varied or excepted by the license”*

9.1. **Section 26 of the Electricity (Supply), Act, 1948** states that *“Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (9 of 1910), and this Act shall be deemed to be the license of the Board for the purpose of that Act:...*

*.... further that the provisions of clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced”.*

9.2. The MSEB is a licensee and, therefore, clause VI of the Schedule to the Electricity (Supply) Act, 1948 is applicable to the MSEB. **Clause VI of the Indian Electricity Act, 1910** provides for “*Requisition for supply to owners or occupiers in vicinity*” and provides guidelines and procedures for becoming a consumer.

10. The Commission observed that the MSEB has to comply with the provisions of their license, particularly in this case, Clause VI of the Schedule of the IE, Act, 1910, which deal, among other things, with the charges for connection. It is further observed that the tariff cannot be independent of the terms and conditions of supply, which is further confirmed by the heading of **section 43(A)** “*Terms, conditions and tariff for sale of electricity by Generating Company*”

11. The Commission is, therefore, of the view that, in view of the foregoing statutory provisions referred to and especially since the terms and conditions of supply issued by the MSEB impinges on the payment of charges by the consumers, they are subject to the jurisdiction of the Commission and are subject to its review in view of Section 29(1) and 29(4) of the ERC Act, 1998. The Commission has already ruled to this effect in its Order dated 5<sup>th</sup> May 2000 in Case No.1 of 1999. The Commission took the view that the MSEB had sufficient time to raise their objection before the appropriate appellate authority. However, the MSEB preferred to collect an undertaking from its consumers, on stamp paper of Rs.50 (Rupees Fifty only), for recovering increase in service line charges vide their Circular No.647 dated 27.6.2000, even after disposal of the Review Application.

12. Keeping the above sequence of events in mind, the Commission hereby directs the MSEB that:

- i) The MSEB must get approved all the Commercial Circulars as prescribed in the Tariff Order dated 5.5.2000.

- ii) A proposal for “***Conditions & Miscellaneous Charges for Supply of Electrical Energy***” should be submitted to the Commission before/along with the next tariff revision proposal for approval.
- iii) The MSEB should stop collecting and/or taking any such undertakings from the consumers towards collection of increased service line charges, increased meter rent or charges on metering accessories (such as CT/PT), etc. and to refund/adjust in bill an amount of Rs.100/- (Rupees one hundred only) to all those consumers who have submitted the undertakings to the MSEB, after 6<sup>th</sup> September, 2000 on which the Review Application of the MSEB in this regard has been decided by the Commission.
- iv) The MSEB also must not force MD based tariff on the LTPG consumers but treat it as optional as provided for in the original tariff order dated 5.5.2000.
- v) In respect of Commercial Circular No.314 dated 6.8.1999 related to billing of LTPG consumers on sanction-load basis, the MSEB should submit the connected load and the sanctioned load for general motive power for the year 2000-2001 within ten days. Based on this category data, further directions will be passed, if any, in this regard.

Sd/-  
(Venkat Chary)  
Member

Sd/ -  
(Jayant Deo)  
Member

Sd/-  
(P. Subrahmanyam)  
Chairman

(Amitabh Rajan)  
Secretary