

BEFORE THE
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai-400 005

Case Nos. 16 and 17 of 2000

IN THE MATTER OF

(I) PETITION OF PRAYAS, PUNE, SEEKING DECLARATION OF AMENDED POWER PURCHASE AGREEMENT (PPA) DATED FEBRUARY 4, 2000 OF MAHARASHTRA STATE ELECTRICITY BOARD (MSEB) WITH RELIANCE PATALGANGA POWER LIMITED (RPPL) AS NULL AND VOID,

AND

(II) PETITION OF SHRI. PRATAP G. HOGADE, CHAIRMAN, KOLHAPUR DISTRICT CO-OPERATIVE TEXTILES FEDERATION LIMITED, ICHALKARANJI SEEKING CANCELLATION OF THE RELIANCE AMENDED AGREEMENT, WITHDRAWAL LOAD SHEDDING BY MSEB AND COMPENSATION FOR DAMAGES DUE TO IMPROPER AND INCONSISTENT POWER SUPPLY BY MSEB.

RESPONDENT: MAHARASHTRA STATE ELECTRICITY BOARD, MUMBAI

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

Date of Order: May 17, 2001

ORDER

As the major issues arising out of the above two cases are similar, the Commission is passing this common order.

2. The Maharashtra Electricity Regulatory Commission (MERC) came into existence under Government of Maharashtra Notification No. ERC.1099/CR.3258/NRG-2 dated August 5, 1999. The Commission is legally bound to discharge the functions under Section 22(1) of the Electricity Regulatory Commissions Act, 1998.

3. The Commission also published on December 27, 1999 through the Government Gazette Notification No. ADM/5/279 the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

4. Shri Pratap G. Hogade, Chairman, Kolhapur District Cooperative Textiles Federation Limited, Ichhalkaranji, submitted a petition under Sections 22 and 29 of the Electricity Regulatory Commissions Act, 1998 (ERC Act 1998) in November 2000 in the above said matter. The Commission received the say of the MSEB on this petition on March 17, 2001. M/s. Prayas submitted a separate application on March 13, 2001 praying that the amended power purchase agreement of the Respondent, MSEB, with RPPL should be declared null and void. The matter was heard on May 16, 2001. During the hearing, Shri Pratap Hogade submitted that his application was basically concerned with three issues:

4.1 **Issue No. 1**

MERC should cancel the unjust and unfair agreement with RPPL made by MSEB or Government of Maharashtra or by both or otherwise MERC should take it up for necessary inquiry and till the decision of the MERC, its implementation should be stayed.

4.2 **Issue No. 2**

MERC should examine the reasons behind load shedding and frequent power failure and should issue necessary orders to MSEB to avoid load shedding and to achieve maximum power generation and purchase through proper economic sources.

4.3 **Issue No. 3**

MERC should decide the method of compensation to the consumers against their damages due to improper, inconsistent power supply. Such compensation should be a part of the tariff and it should be made applicable at the earliest possible.

The Commission observed that Issue No. 1 in Shri Hogade's petition was akin to the points raised in the petition submitted by Prayas and could be taken up together after disposing of Issue No. 2 and Issue No. 3.

5. **Issue No. 2:** Shri Hogade submitted that there has been a lot of load shedding by the MSEB in the rural areas beside declared power cuts and power failure. The MSEB has been declaring that there is a shortage of 1500-2000 MW within system, which is either due to (a) lesser power generation and (b) lesser capacity utilization.

5.1 Shri Hogade also questioned the veracity of the MSEB's reply on this point vide their affidavit dated March 17, 2001 claiming that there is a genuine gap (1500 to 2000 MW) between generation and demand and, therefore, load shedding was inevitable though they have achieved generation norms well above the Government of India norms set for various generation utilities.

5.2 He also submitted that the MSEB's claim of generating 260 MUs more than the last year (for the period April to November 1999 over the period April to November 2000) was not true, as during this period, the Khaperkheda unit has been added to their system. Hence, the applicant prayed that the Commission should examine the reasons behind the load shedding and issue necessary orders to the MSEB to avoid load shedding and to achieve maximum power generation in their units.

5.3 The Commission observed that the above issue raised by the applicant is being addressed in greater detail in the case (Case No. 6 of 2000) already pending before the Commission in the matter of violation of the directions of the Maharashtra Electricity Regulatory Commission (MERC) on merit order dispatch by the Maharashtra State Electricity Board (MSEB) and unwanted purchase of most expensive energy from Dabhol Power Company (DPC) ignoring cheaper alternatives during the year 2000-2001 submitted by Sarvashri S.R Paranjape and P. Kaul.

5.4 The Commission advised the applicant that the matter raised by him can be submitted through affidavit as a supporting document for Case No. 6 of 2000 and the Commission's order on this issue will adequately address the applicant's prayer.

6. **Issue No. 3:** The applicant alleged that besides the regular load shedding and power cut, various equipments used by the consumers are affected badly as a result of irregular power supply and voltage fluctuations. The applicant submitted to the Commission that the rights of the consumers must be protected and, therefore, the Commission should grant the prayer of compensation to the consumers in respect of the damages caused due to improper, inconsistent power supply. The applicant submitted that the said compensation should be a part of the tariff and should be available as early as possible.

6.1 In response, the MSEB submitted that there are no such cases of voltage fluctuation or serious low voltage complaints specifically in Kolhapur District. Further, the MSEB submitted that as per the agreement executed with the consumers and as provided in clause 18(a) of the Board's Conditions of Supply, the Board does not assume responsibility to compensate its consumers on account of interruptions in supply. It has always been their endeavour to keep interruptions at a minimum level and the consumers are intimated about the load shedding through public notices.

6.2 In view of the above, the Commission observed that the matter does not survive. However, the Commission expressed the hope that an appropriate reform process would be initiated by the MSEB and its implementation in the electricity sector in the State will empower the consumers to secure their rights in future.

7. **Issue No. 1:** Shri Girish Sant of Prayas, Pune, submitted that as per Section 22 (1) (c) of the ERC Act, 1998, the MERC is empowered and duty bound to regulate the power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the generating companies, generating stations, or from other sources for transmission, sale distribution and supply in the State. Again, as per Regulation No. 73 of the MERC (Conduct of Business) Regulations, 1999, any generating company proposing to enter into any agreement for supply of electricity between the generating company and any buying party shall get the approval of the Commission for the tariff before entering into such a contract.

7.1 He further submitted that the MSEB has entered into an agreement for power purchase with the RPPL on August 3, 1996. However, subsequently on February 4, 2000, MSEB entered into an amended agreement in respect of the same power purchase agreement without the prior approval of the MERC. Shri Sant asserted that, by doing so, the MSEB have flouted the legal provisions of the ERC Act and also the MERC (Conduct of Business) Regulations.

7.2 The petitioner submitted the prayer that (i) in view of Section 22 (1) (c) and the MERC's existence on the date of the amended agreement entered into between the MSEB and the RPPL, the amended agreement should be declared null and void, and (ii) the Commission should direct the MSEB to seek the Commission's approval before entering into or amending or approving any power purchase related contract, escrow agreement, etc., under the provisions of Section 22 (1) (c) and the MERC (Conduct of Business) Regulations, 1999.

7.3 Shri Hogade submitted that not only the Commission should declare the amended agreement null and void, but it should also stay the implementation of the unjust and unfair original agreement made by the MSEB with the RPPL.

7.4 The MSEB in its reply submitted that in order to encourage private sector participation in power generation projects, the MSEB has initiated the international competitive bidding process in 1990 by issuing pre-qualification bids. After completion of due process, the Government of Maharashtra short-listed various parties in the year 1992. Subsequently, after receiving the financial bids, the Government of Maharashtra awarded the Naphtha/Gas based project to M/s. RPPL in December 1994, its bid being the lowest in terms of capital cost.

7.5 The PPA negotiations started in January 1995 and was signed on August 3, 1996 for 410 MW CCGT power project at Patalganga, District Raigad, for a project cost of Rs. 1411 crores (US \$ 330.286 million + Rs. 465.13 crores @ 31.5 Rs./\$), with naphtha/gas as fuel, the Union Ministry of Power having given fuel linkage for naphtha.

7.6 As per the conditions of the PPA, RPPL was required to procure various clearances for this project, including Techno-Economic Clearance (TEC) from the Central Electricity Authority (CEA). The Company was granted extension upto July 1998 to complete the clearance process.

7.7 The CEA, vide their letter dated January 22, 1998, issued TEC to this project with various stipulations, mainly reduction in project cost to Rs. 1251.6 crores @ exchange rate of Rs.31.5/\$ and increase in installed capacity of the project from 410 MW to 447 MW. The CEA also stipulated that the GOI Notification is to be followed for tariff calculation.

7.8 Based on the CEA clearance, RPPL submitted the proposal to the MSEB/GOM for changes required to be made in the PPA. The GOM took decisions on various issues such as incorporation of CEA stipulation, installed capacity, escrow provision, etc., vide Energy Department Letter Nos. RIL-1098/CR-3172/Section-2/Urja-2 dated September 16, 1998, June 22, 1999 and December 21, 1999.

7.9 To comply with the Government's decision, the MSEB initiated the process of amending the power purchase agreement with the RPPL. The original agreement dated August 3, 1996 was amended and the amended agreement was signed on February 4, 2000. The MSEB further submitted that the default escrow provision as incorporated in the amended power purchase agreement was not signed as on March 17, 2001.

7.10 The Commission enquired with the MSEB whether, before finalizing the amendment of the original agreement, the MSEB had made any attempt to check the legal validity of such an amendment. The Commission also observed that there is no record to show that the MSEB had approached the Commission under Section 22 (1) (c) of the ERC Act, 1998, and Regulation 73 of the MERC (Conduct of Business) Regulations, 1999, seeking its approval to the amended agreement for procurement of power. The MSEB in its reply conceded that they had merely implemented the Government's order and there was no malafide intention to deny or over look the jurisdiction of the MERC in such matters.

7.11 The MSEB further wanted to know whether, in such cases, the purchaser or the supplier of electricity should approach the Commission for approval of the price at which the power shall be procured. The Commission drew the attention of the MSEB to the provisions of Section 22 (1) (c) of the ERC Act, 1998, which are explicit in this regard.

8. In view of the above facts, the Commission hereby decides and directs as follows:

1. The amended agreement on PPA dated February 4, 2000 entered into between the MSEB and the RPPL is of ***doubtful legal validity***.
2. The MSEB should, if it so desires, approach the Commission before entering into or amending or approving any power purchase arrangement with a generating company or a generating station and it should adhere to the procurement process approved/to be approved by the MERC, including the price at which the power shall be procured, as envisaged in Section 22(1)(c) of the ERC Act, 1998.

Sd/-
(Venkat Chary)
Member

Sd/-
(Jayant Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman

Secretary, MERC