

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

**Case No.1 of 1999**

**IN THE MATTER OF  
Revision of tariff application to various categories of consumers of  
Maharashtra State Electricity Board with effect from 01.11.1999.  
(Interim order)**

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

**Date of Order: February 28, 2000.**

**ORDER**

By an interim order dated February 23, 2000, the Maharashtra Electricity Regulatory Commission (for short, Commission) directed the Chairman, Maharashtra State Electricity Board (for short, MSEB), to submit legal opinion on the points raised in the order along with an affidavit finally validating the data submitted to the Commission. It was made clear in the order to specifically confirm that, taking cognizance of the proposal of the MSEB, which does not fulfil the mandatory requirements under Section 59 of the Electricity (Supply) Act, 1948 would neither constitute an illegality nor would it constitute a new proposal.

The MSEB on February 24, 2000 in its affidavit filed before the Commission annexed the opinion given by its Solicitors M/s. Little & Co. They had opined that:

"it is permissible under law for the Commission to consider and determine the proposal for tariff submitted by the Board even though it may not fully meet the statutory requirement as contemplated by Section 59 of the Supply Act. The Commission, however, will have to record the reasons in writing while determining the tariff proposal submitted by the Board. In view of the fact that the proposal was

framed on the basis of certain projected figures which have now undergone changes with the passage of time and that the Commission has not been able to frame the regulations providing for the terms and conditions for the fixation of tariff as contemplated by Section 29(2) of the Act, the Commission will be justified in departing from the principle contemplated under section 59 of the Supply Act. It is also in the interest of justice that to minimise the loss, the Commission should consider the proposal already submitted by the Board and complete the process of determination of the tariff even if it may not fully comply with the requirement of Section 59 of the Supply Act."

It appears that M/s. Little & Co. have also consulted Senior Counsel, Mr. A.M.Setalvad, who has agreed with the views mentioned above.

Mr. Khatlawala, Senior Counsel, appearing on behalf of the MSEB, also referred to Section 67 of the Electricity (Supply) Act, 1948 and drew the Commission's attention to the words "to the extent available" to justify his interpretation of section 59 of the Electricity (Supply) Act 1948 to the effect that it is permissible to have a rate of return of less than 3%.

The Commission independently sought the legal opinion of Shri M.G.Ramachandran, Advocate, New Delhi whose opinion was sent by fax. He has stated in his opinion that:

- (1) No useful purpose will be served in returning the application. MSEB should be asked to correct the application with changed amounts,
- (2) The Commission should hold a public hearing, as there are significant changes. It is, however, not necessary to give a long time. The public hearing can be held in 15 days.
- (3) Alternatively the Commission can increase tariffs as per original amounts and allow MSEB to reserve the right to ask for addition Rs.1040 crores in a proper new application. This may probably not satisfy the purpose. My suggestion is to follow items 1 and 2.
- (4) The Commission has the function as well as the power to determine tariff in terms of Section 29 of the ERC Act. Such a power can be exercised and tariff can be increased if the Commission consider appropriate, even without MSEB asking for it. I would not suggest that public hearing may not be held. As mentioned above, a short public hearing in 15 days or so is sufficient."

Mumbai Grahak Panchayat submitted a legal opinion of Dr. Dhananjaya

Y.Chandrachud, Addl. Solicitor General for India, in this matter which is reproduced below:

"The State Electricity Regulatory Commission is vested with a power under Section 22 (1) (a) of the Electricity Regulatory Commissions Act, 1998 to "determine" the tariff for electricity in the manner provided in Section 29 of the Act. Section 29 of the Act empowers the Commission to determine the tariff, in accordance with the provisions of the Act notwithstanding anything contained in any other law. The considerations, which must guide the Commission in its determination, are enunciated in sub-section 2 of section 29.

The expression "determine" means "to settle or decide; to come to a decision; to lay down decisively or authoritatively; to put an end to; to ascertain definitively." (P. Ramanatha Aiyar's Law Lexicon, 1997 Edition, page 541). The expression "determination" signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal, (Jaswanth Sugar Mills v/s Laxmichand (AIR 1963 SC 677 @ 680)). The Commission is an expert body which has been conferred with wide ranging statutory functions. The powers of the Commission are laid down by Sections 12 and 23 of the Act. The Act is given overriding effect by Section 52. Bearing in mind the provisions of the Act, it is abundantly clear that the function to determine is that of the State Commission. The State Commission is not bound to accept a proposal submitted to it by the Board or any other authority. The question as to whether a proposal should be acceded to is for the Commission to decide. The considerations which the Commission must have regard to as guiding principles are laid down in Section 29 (2). These considerations include not merely the principles contained in the Electricity Supply Act, 1948 such as Section 59, but also other matters such as the interests of the consumers, considerations of efficiency, performance and optimum return. The Commission is an authority which is vested with the jurisdiction to determine tariffs. The Commission can call for information data, and statistics that would enable it to decide what should be the tariff determination. A proposal which is inconsistent or which does not furnish adequate material to the Commission need not be accepted by the Commission. The object of setting up the Commission was obviously to ensure rationalisation of electricity tariffs and the implementation of transparency. The Board, after the Act has come into force, cannot determine the tariff and this power is given to the Commission. The Board is duty bound to ensure that the Commission is placed in possession of all relevant material that would enable the Commission to discharge its statutory obligation. The interests of the Board have no doubt to be borne in mind by the Commission. However the Commission's power is exercisable in public interest. Other components of the public interest including the consumer's have to be equally borne in mind by the Commission."

In addition to the above opinions given by different Counsels, Shri Khatlawala, Senior Counsel, appearing on behalf of the MSEB made the following points:

- (1) The proposal submitted by the MSEB in October 1999 fulfills the requirements of section 59 of Electricity (Supply) Act, 1948. However, due to the circumstances beyond the control of MSEB and the facts that have emerged on the basis of actual data collected, the figures submitted by MSEB had to be revised several times, resulting in the latest proposal revealing a totally different set of figures, which will not be meeting the requirements of section 59 of the Electricity (Supply) Act, 1948. However, in the interests of the MSEB and the consumers at large, the Commission is empowered to take cognizance of the proposal and, while allowing such tariff hike as is considered appropriate by the Commission, may give an opportunity to the MSEB to come with a revised proposal to meet the deficit in as short time as possible. He further relied on section 30 of the Electricity (Supply) Act, 1948 to say that it is well within the competence of the Commission to depart from the guidelines laid down under section 29, as long as the reasons for such a departure are recorded in writing by the Commission. He further argued that the interest of transparency have already been met by following an elaborate procedure and by giving the public at large ample notice from time to time and opportunities to file affidavits and to adduce oral evidence in public hearings.
- (2) He said that it would not be necessary to lengthen this procedure further by treating the revised proposal as a new proposal, as the delay involved would seriously jeopardize the finances of the MSEB which is already facing hard times.
- (3) The proposal now submitted by the MSEB with the data as validated by them on affidavit dt. 24.2.2000, does not constitute a new proposal and, therefore, would not require an elaborate procedure to be followed, but should merely be treated as a continuation of the earlier proposal. Such changes in the data which have come about are but natural in the context of the emerging situation.
- (4) He also submitted that the data as authenticated by the MSEB now does not constitute a change in the substance or character of the proposal submitted to the Commission in October 1999.
- (5) He further said that the MSEB would abide by whatever figures the Commission would consider as authenticated and would follow any directions which the Commission would give in making new proposals hereafter, but in the interests of justice and fairplay, the application of the MSEB should not be rejected merely on technical grounds.

The representatives of the consumer organisations appointed under section 26 of

ERC Act, in addition to the legal opinions already referred to above, stated that:

- (1) Changes that the MSEB have made were made after the last date for receipt of objections from the public. They were major changes in regard to the number of consumers, major categories, connected load and consumption, power

generation as well as power purchase, which affects the revenue side as well as the expenditure side of the proposal. Only the third component of the proposal, which requires tariff increase, has been kept constant. Considering these facts, it is felt that going back to the people is essential.

- (2) They will cooperate with the Commission to speed up the entire process so that the Commission delivers its order as soon as possible.

The Advisors to the Commission, were asked to offer their comments on the affidavit filed by the MSEB on 24.2.2000. They opined that:

- (1) There have been substantial changes in the character and nature of the proposal, as can be seen from the figures of revenue, expenses, surplus, connected load and T&D losses. Therefore, it would be very difficult to accept the MSEB's contention that the proposal has not changed in its structure or character,
- (2) The original proposal submitted in October 1999 did comply with section 59, but the current proposal did not meet the key requirements of section 59 and a further revised proposal could be submitted by the MSEB only when it complies with section 59 of Electricity (Supply) Act.
- (3) It was also brought out to the notice of the Commission that in the original proposal, certain revenue streams were not considered while calculating the total revenue. If revenue streams such as miscellaneous revenue, inter-State sales, sales to Mula-Pravara and industrial LTPG connected load is taken into account, the surplus would have been Rs.1118 crores as against the requirement of about Rs.403 crores (*calculated @ 4.5% Rate of Return on Net Fixed Assets*). In the revised affidavit, the MSEB has shown a deficit of Rs.651 crores, even after considering full tariff hike.
- (4) Thus, the surplus amount gets reduced by Rs.1800 crores, which is a substantial amount. There have been substantial changes in the figures of connected load, number of consumers, agricultural consumers and T&D losses which have also varied by more than 2000 MUs in the affidavits submitted by the MSEB.
- (5) The Advisors further stated that the MSEB should have clarified on the following issues :
  - (i) whatever the legality of submitting a new proposal or a modified proposal, whether it has complied with section 59;
  - (ii) whether the proposal that they are submitting have new constituents,
  - (iii) whether their information is based on facts with backup or more assumptions being made by the MSEB in the proposal.

- (6) It appears from the repeated affidavits submitted by the MSEB that there were inconsistencies in the figures that had been used to frame the proposals.
- (7) They also mentioned that the onus of providing validation through accurate data rests with MSEB.

The Commission has carefully gone through the legal opinion submitted and the arguments advanced. The Commission attaches great importance to the Objectives and Reasons which necessitated the enactment of the Electricity Regulatory Commissions Act, 1998. It is acutely conscious of the fact that the health of the State Electricity Boards has to be improved. The ill health of the State Electricity Board is partly due to its own inefficiency and incompetence, but it is also due to irrational tariffs imposed by extraneous authorities. The Commission is also aware of the lack/inadequacy of budgetary support often from the State Govt. as a result of which the State Electricity Boards have become incapable of even proper maintenance of their assets, leave alone purposeful investment. Further, lack of credit-worthiness of the State Electricity Boards has been detrimental in attracting investments from the public and private sectors. Hence, the ERC Act makes it mandatory for the State Commission to fix tariffs in such a manner that the consumers or a class of consumers shall not be charged unreasonably above/below the cost of supply. It is also necessary that the Commission should send a proper signal to the authorities concerned that subsidies, if any, should be properly assessed and targeted and should form part of the State's budget itself. It is also necessary, in the view of the Commission, that the tariff for the agricultural sector requires urgent upward revision, even if it is over a period of some years before it reaches anywhere near the cost of supply. It is also necessary, in the opinion of the Commission, that not only should meters be installed forthwith in as short a time as possible but also that the consumers are properly billed and not based just on assumptions, and the billed amounts are collected regularly and not written/waived off without strict and sufficient

cause by the authorities, who are extraneous to the statutory authority of the Board. Also, that all categories of consumers shall pay their electricity dues on pain of disconnection, which is a mandatory requirement under Section 24 of the Indian Electricity Act, 1910. The Commission is of the considered opinion that it is not sufficient only to talk about these things from public platforms, but they have to be translated into effective policy and implemented so that the financial health of the State Electricity Boards can be restored in as short a time as possible and so that the infrastructure sector, of which electricity is the most important component, gets the attention it deserves. Taking into consideration all these above factors, the Commission directs the MSEB to revise the proposal on the basis of the actual data that is now available in as much as almost over a period of one year has elapsed since the earlier proposal was submitted to the State Govt. and the financial year is now drawing to a close. It is also necessary that the State Electricity Board makes informed projections on the basis of actuals achieved so as to enable the setting of reliable tariff rates for the year 2000-2001. The Commission, therefore, directed the MSEB to submit its affidavit on the above lines as a continuation of its earlier tariff proposal at the earliest. The MSEB informed the Commission that it will submit revised proposal by 6<sup>th</sup> March 2000. The Commission also directed that as the proposal has undergone substantial changes, the public should be given an opportunity to study the new figures submitted by the MSEB and to offer comments within a period of 15 days from the time it is made public.

While filing the affidavit, which the MSEB has agreed to submit by 6<sup>th</sup> March 2000, for technical validation, the Commission directs the MSEB to avoid the following lacunae observed in the data submitted for agricultural consumption and T& D losses. The Advisers to the Commission, brought to the Commission's notice the fact that information has been provided by MSEB on energy audits carried out on agricultural feeders as well as in urban

divisions. The consumer interest group, Prayas, in their affidavit dated 23.2.2000 had brought to the notice of the Commission that the operating norms for annual hours of operation for LT agricultural pump-sets cannot be more than 1600 hours in a year. MSEB has not contested this claim of Prayas.

The Advisers to the Commission brought to the notice of the Commission that the MSEB is carrying out energy audits in 16 urban divisions. MSEB has furnished data for the period starting June 1998 to the Commission. This data reveals that the total loss in these divisions for the period from June 1998 to May 1999 was 26.5%. The Commission felt that if energy loss is so high in urban divisions, then the loss in rural divisions is, for obvious reasons, likely to be higher.

The data furnished by Prayas, which has not been questioned or controverted by the MSEB, coupled with the above observations of the Commission suggests substantially higher T & D losses as compared to the MSEB's claim of 15% to 17%. The preliminary analysis suggests that T& D losses in the MSEB system may be 30% or more. MSEB should consider realistic T&D losses while preparing the revised proposal.

In order to speed up the tariff process and to maintain transparency in the process, the Commission has decided on the following course of action: –

- (1) MSEB shall publish revised proposal on its website after validation with the Commission. At the time of validation of the revised proposal before the Commission, the MSEB should come prepared to discuss the following issues for considering the feasibility of their inclusion in the revised proposal, before the revised proposal is made public:

- (a) Installation of `Time-of-Day' meters for levelling the demand between peak and non-peak hours, as recommended by the Rajadhyaksha Committee,
  - (b) For LT Motive Power consumers, the provision of the option of Maximum Demand (MD) basis instead of Connected Load tariff,
  - (c) Encouragement for the use of static meters by consumers,
  - (d) Ensuring that all new connections are released with meter based tariff only,
  - (e) Provision of new connections within a stipulated period. In case of delay beyond the stipulated period, to inform the consumers the reasons for the same and the likely date of new connection,
  - (f) Action plan for supplying meters for all consumers according to a schedule, as suggested by Rajadhyaksha Committee,
  - (g) Implementation schedule for the suggestions made in the Rajadhyaksha Committee report,
  - (h) Strict implementation of economic despatch order so as to economise the cost of supply,
  - (i) Clearance of all pending applications within the stipulated time-frame, strictly in spirit of Section 44 of Electricity (Supply) Act, 1948. To clear all pending applications below 10 MW, received prior to 15.12.1999, within 15 days,
  - (j) Wearing of name badge compulsorily by MSEB employees, for easy identification of staff dealing with the public,
  - (k) While projecting the expenditure in the tariff proposal, to consider efficiency norms provided by various agencies such as Power Finance Corpn., Central Electricity Authority, Rural Electrification Corpn., and other financial institutes, etc.
- (2) MSEB shall also arrange to send at its own cost the revised and validated proposal to all individuals/agencies who have commented on its October 1999 proposal.

- (3) **MSEB shall publish in leading newspapers an advertisement informing public at large that their October 1999 proposal for tariff revision has been modified and a new set of proposal papers is available with MSEB, and can be obtained by payment of Rs.200/-.**
- (4) **The public will be given time of 15 working days from the date of publishing of advertisements, for submitting objections to the Commission.**
- (5) **Public hearing will be conducted for a day in Mumbai, which will be indicated in due course.**

Sd/-  
(Venkat Chary)  
Member,MERC

Sd/-  
(Jayant Deo)  
Member,MERC

Sd/-  
(P.Subrahmanyam)  
Chairman

Sd/-  
(Amitabh Rajan)  
IAS  
Secretary  
Maharashtra Electricity Regulatory Commission