

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 27 of 2004

In the matter of
Application by M/s. Simla Industries for sanction of additional load
and related issues.

Dr. Pramod Deo, Chairman
Shri. A. Velayutham, Member

ORDER

Dated: 17th October, 2005.

The present Petition was filed on 8th November 2004 by M/s. Simla Industries with the following prayers against the Maharashtra State Electricity Board (MSEB) as Respondents:

- a) *That an order be granted by this Hon'ble Commission directing the Defendants to sanction total 99 HP of electrical power to the Plaintiffs at their works at 31, Khopoli Industrial Estate, Khopoli, District: Raigad, State: Maharashtra, with immediate effect;*
- b) *That an order be granted by this Hon'ble Commission directing the Defendants to install adequate cables, wiring, meters and such other allied facility for the purposes of regularizing the consumption of 99 HP of electric energy to the Plaintiffs at their works at 31, Khopoli Industrial Estate, Khopoli, District: Raigad, State: Maharashtra, with immediate effect;*
- c) *That an order be granted by this Hon'ble Commission, ordering the payment of Rs.5,00,000/- (Rupees Five Lakhs Only) as damages to the Plaintiffs for harassment caused to them as a result of the failure of the Defendants to provide them with adequate electrical power at their works at 31, Khopoli Industrial Estate, Khopoli, District: Raigad, State: Maharashtra ;*
- d) *That an order be granted by this Hon'ble Commission, injuncting the Defendants, and/or its officers, and/or its employees, and/or its servants, and/or its agents and/or its representatives, and/or its assigns, from disconnecting the electric supply to the Plaintiffs at their works at 31, Khopoli Industrial Estate, Khopoli, District: Raigad, State: Maharashtra ;*
- e) *That pending the hearing and final disposal of this suit, an order be granted by this Hon'ble Commission, injuncting the Defendants, and/or its officers, and/or its employees, and/or its servants, and/or its agents and/or its representatives, and/or its assigns, from disconnecting the electric supply to the Plaintiffs at their works at 31, Khopoli Industrial Estate, Khopoli, District: Raigad, State: Maharashtra.*

2. The Petition states that the Petitioner, i.e., Simla Industries (SI), is a Small Scale Industrial Unit engaged in the manufacturing of Sodium Carboxy Methyl Cellulose (Sodium CMC) and having a sanctioned load of 20 HP.



3. According to the Petition, on 14th November 2003, SI applied to MSEB for additional load sanction of 79 HP. However, there was no reply from MSEB granting or refusing to grant additional power to SI. In the circumstances, SI continued to draw its required power with due knowledge of MSEB officials and also effected payment of the bills which show extra power consumed alongwith payment of the penalty imposed by MSEB.

4. The Petition further states that on 28th July 2003, upon inspection by the Flying Squad, MSEB observed that SI is drawing power of 76.5 HP, a fact not denied by SI. Therefore, on 5th February 2004 MSEB directed SI to regularize its excess consumption within 15 days, failing which MSEB would disconnect the power supply without further notice.

5. It is stated that on 9th February 2004, SI applied for additional sanction under the Special Low Tension (SLT) category to meet the total requirement of its power need of 99 HP. After completing all the necessary compliances as sought by MSEB, SI constantly followed up with MSEB for additional sanction.

6. The Petition states that MSEB issued Notices of disconnection on 17th June 2004 and 25th August 2004, and further made categorical threats of disconnection on 6th November 2004.

7. The Petition further contends that MSEB wrongly demanded that the transformer must be purchased by SI when MSEB's own transformer was having adequate capacity to provide additional power to SI.

8. The Petition alleges, on the basis of the details given that MSEB is exploiting its monopolistic status as the sole provider of electrical energy and is exploiting SSI Units like the Petitioner. Therefore, it is prayed in the Petition that the Commission direct MSEB for release of additional load and restrain MSEB from disconnection of the electric supply pending its hearing and final disposal.

9. MSEB's Reply submitted on 6th December 2004 stated that, based on the Flying Squad's visits and MSEB's observation of excess connected load as per the prevailing practice then, the Assistant Engineer, Khopoli, vide his letter dated 5th February 2004, informed SI to avail of HT connection as the consumer was using more than 67.5 HP, which is the higher limit for availing load on low tension. Further, since the consumer was manufacturing Sodium Carboxy Methyl Cellulose, prima facie the activity fell under the category of chemical industry, for which uninterrupted supply is required and the breakdowns of HT express feeder are extremely low as compared to LT connection.

10. It is further stated in MSEB's Reply that, pursuant to the above letter, SI applied for additional load under the Special LT (SLT) category and submitted to MSEB a certificate from Deputy Director (Chemical), Regional Testing Centre, Mumbai (under Ministry of SSI, GoI), which clearly indicated that the Petitioner is not covered under Plastic or Allied Chemical Industry. MSEB have taken due cognizance of this while sanctioning the load of 99 HP.

11. MSEB have admitted in their Reply that there has been delay on their part in sanctioning the said load, and that the consumer would be given necessary credits in the future energy bills. There was neither any coercive action of disconnection resorted to by MSEB nor any deliberate harassment of the consumer by MSEB.

12. However, even after MSEB issued the sanction letter, SI did not receive the SLT connection nor did MSEB return the excess charges levied by them against penalty and other miscellaneous charges. This fact was communicated to the Commission vide letter dated 14th January 2005 addressed by the Advocates on behalf of SI.



13. Thereafter, vide letter dated 21st February 2005, Advocates for SI informed the Commission that MSEB have attempted to resolve the grievances between them and that the matter may be further adjourned by a period of three weeks. The adjourned hearing was further postponed on request of applicant's Counsel Shri J.A Udaipuri till further notice.

14. On 28th April 2005, SI wrote to the Commission asking for clarification regarding the rate at which penalty should be charged by MSEB on prevailing demand charges for use of power in excess of the contract demand, as there was some misunderstanding in respect of demand charges and penalty to be charged by MSEB in this regard.

15. The matter was heard on 15th June 2005. Shri. Rahul Bhomavat, representative on behalf of SI, referred to the Petition and submitted that SI is a LT consumer to whom MSEB have charged 300% as demand / penal charges for excess drawal/ use in excess of contract demand since January 2003. He further pointed out that, vide its letter dated 6th May 2005, SI had sought directives from the Commission regarding how the demand and penal charges chargeable by MSEB.

16. The Commission asked Shri. Bhomavat to explain clearly as to what is prayed for. Shri. Bhomavat admitted that MSEB's recent action has left no cause of grievance as stated in the original Petition, except that the prayers of the Petitioner essentially referring to charging of penalty, amount of penalty and so on need to be addressed.

17. Representative on behalf of MSEB pointed out that LT consumers drawing excess load were charged penalty at double the rate of demand charges as per the applicable tariff.

18. Representative of MSEB further submitted that the Tariff Order in Case No. 2 of 2003 (read with the approved L.T. tariff booklet dated 1st December, 2003) had been wrongly interpreted by various quarters, including the Petitioner, as a result of confusion about meaning of and difference between the terms "penalty" and "penal rate", and there was no discrepancy or ambiguity in the Order as such. He submitted that the Commission, vide its Clarificatory directives subsequently, had made amendments to the HT Tariff Booklet relating to the penalty for exceeding contract demand in case of HT consumers. The Commission observed that no amendment had been made to the provisions applicable to LT consumers.

19. The Commission further pointed out that the issue in the present case was essentially that LT consumers were charged at the penal rate of 300%. Representative of MSEB submitted that MSEB had clear instructions that in case of excess demand, consumer should be billed on the basis of actual connected load and levied penal charges for demand in excess over contract demand.

20. Counsel for SI submitted that this meant that MSEB had wrongfully charged 300% penalty from the Petitioner.

21. Dr. S.L. Patil on behalf of Thane Belapur Industries Association submitted that, as per Section 126(5) of the Electricity Act, 2003, the assessment of penalty should be restricted to one and a half times of the applicable tariff, and it would supercede MSEB's Conditions of Supply.

22. Ms. Deepa Chawan, Counsel for MSEB submitted that the issue before the Commission was a limited one. The issue of Section 126(5) of the Electricity Act, 2003 can be raised appropriately by way of a notice and separate application, which would be dealt with by MSEB appropriately at that time.



23. The Commission notes that it has progressively dispensed with the concept of connected load in favour of measurement of demand. It has also approved a certain penalty for exceeding the Contract Demand by LT industrial (LTPG) consumers who avail of MD based tariff, and a penalty for exceeding sanctioned load by those LT industrial (LTPG) consumers who avail of HP based tariff. The Commission, vide its Order dated 14th July 2005 in Case No.2 of 2003 {Para 33(c)}, has given the following directions:

“All LT consumers (except LT agricultural consumers) with sanctioned load exceeding 20 kW will be assessed only by Maximum Demand recording through the meter. MSEB shall take immediate steps to install suitable meters in line with the directions in the Tariff Order dated 10th March 2004 (Para 44), if not done so far.”

24. Vide its Order dated 14th July 2005 (read with Corrigendum dated 17th October, 2005, the Commission has also directed that the assessment for violations would differ depending on the period of occurrence and the corresponding tariff and loads, as follows:

- (1) Period prior to 10th June 2003 (i.e., prior to enactment of EA, 2003): As per Clause 31(f) of MSEB's Conditions of Supply.
- (2) Period from 10th June 2003 to 30th November 2003 (uptil date of effect of Tariff Order): One and a half times the normal tariff for the load exceeding the sanctioned load, measured by connected load method.
- (3) Period from 1st December 2003 onwards: If load in excess of sanctioned load has been measured by maximum demand recorded by meter, then two times the tariff applicable for the exceeded portion of the load (maximum demand minus sanctioned load). No penalty will be applicable if load in excess of sanctioned load is claimed on the basis of the connected load method.

25. In the third Tariff Order effective from December 2003, the Commission had clearly stipulated two types of demand-based tariff for LTP-G (General Motive Power) category of consumers. These consumers were given two options:

- (a) Demand charges at Rs.60/- per HP per month for 50% of the sanctioned load, in which case the demand charges will remain the same on month-to-month basis; or alternatively,
- (b) Maximum demand (MD)-based tariff, in which case, irrespective of Contract Demand, the demand charges, governed further by the “Billing Demand” definition, will vary from month to month depending on recorded usage.

26. As per the penalty clause stipulated in the LT Tariff booklet, if a consumer who has opted for LTMD based tariff exceeds his Contract Demand, the demand in excess of the Contract Demand shall be charged at the rate of 150% of the prevailing Demand Charges. However, if a consumer who has not opted for LTMD tariff is within the limits of his sanctioned load, fixed charges at the rate of Rs.60/- per HP are to be recovered for 50% of sanctioned load. However, if he exceeds his sanctioned load, penal charges for the unauthorized demand beyond the sanctioned load have been stipulated at double the rate of demand charges applicable for MD based tariff to General Motive Power consumers, the only caveat being that excess drawal is to be measured through MD meters / Acucheck meters. One intention behind the heavy penalty is to encourage consumers as well as Licensees to install meters with MD facility.

27. While submitting the draft Tariff Booklet for approval following the last Tariff Order, in the Section on Miscellaneous and General Charges for LT supply, MSEB had included the following:



“In case of excess connected load, the consumer shall be billed, based on the actual connected load and shall be levied penal charges for the unauthorized connected load at double the rate of Fixed Charges applicable under Tariff applicable to General Motive Power consumers prevailing from time to time.”

The Commission had deleted the references to connected load, and revised the dispensation to read as follows:

“In case of load drawal exceeding sanctioned load, to be measured through the MD meters (Tri-vector or Accu-check meters as the situation demands), the consumer shall be billed based on the actual drawn demand and, shall be levied penal charges for the unauthorized demand beyond the sanctioned load at double the rate of demand charges, applicable for MD based tariff to General power consumers and non-domestic consumers, prevailing from time to time.”

28. Explaining the reasons for the change, while giving approval to the Tariff Booklet, the Commission had stated that:

“The Commission has recommended that all customers, particularly LT General Motive consumer category, and LT commercial category (opting for MD based tariff) having load more than 20 KW shall be provided with MD based ToD meters (ref. Directive 44 at page 14 of Tariff Order dated 10th March 2004). MSEB in order to prevent misuse of connected load based penalty, both by the internal people and external customers, shall fall upon measurement based assessment for detecting suspected unauthorized extraction of energy beyond the sanctioned load for consumers having more than 20 KW sanctioned load in the first phase. This is also in line with the Supply Code, which has abolished the concept of connected load, and developed the Code on the basis of sanctioned load only.”

29. Thus, the Commission notes that the provisions in the Tariff Order and Tariff Booklet regarding penal charges to be levied in case of drawal in excess of contract demand or sanctioned load, as the case may be, are very clear, and the Commission has from time to time issued specific clarifications and directives on the issue through its Order dated July 14, 2005 in Case No. 2 of 2003. The Commission directs MSEB to verify and ascertain the computation of penal charges afresh in the instant case based on the directives issued by the Commission, and, accordingly, intimate the outcome of the same to SI and refund the excess recovery of penal charges, if any. Any further grievance arising therefrom may be taken up by SI with the appropriate Consumer Grievance Redressal Forum.

30. MSEB has recently given way to four successor companies, and the distribution function has been vested in the Maharashtra State Electricity Distribution Company. However, the term 'MSEB' has been used throughout in this Order as a matter of convenience.

(A. Velayutham)
Member

(Dr Pramod Deo)
Chairman, MERC



(A.M. Khan)
Secretary, MERC