

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 23 of 2004**

**In the matter of**  
**Illegal recovery of Service Line Charges, etc., from M/s Lloyds Steel Industries Ltd., for**  
**reinstatement of contract demand.**

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

**ORDER**

**Dated: 18<sup>th</sup> October, 2005**

M/s Lloyds Steel Industries Ltd. (LSIL) has filed a Petition on September 18, 2004, before the Commission against the Maharashtra State Electricity Board (MSEB), with the following prayers:

- "(a) The Demand Notice dated 26.8.2002 issued by Respondent's Wardha office be declared as illegal and may please be set aside and quashed.*
- (b) The Applicant may be permitted to avail power supply to the limit of 90 MVA without recovery of any additional charge either on account of Service Connection Charges or the Service Line Charges.*
- (c) Direct the Respondent to refund the amount of Rs.227.9 lakhs so collected for re-instatement of the contract demand to the original level of 90 MVA along with interest @ 12% from the date of payment till the date of refund."*

2. LSIL had earlier approached the Commission in the year 2002 in this matter with above prayers, which they later preferred to settle out of court with MSEB. While disposing off their Petition in Case No. 38 of 2002 by Order dated August 3, 2004, the Commission stated that it had not gone into the merits of the case, and gave the liberty to LSIL to apply afresh before the Commission depending on the outcome of their ongoing negotiations with MSEB. LSIL have accordingly approached the Commission again.

3. The Petition states that LSIL has two units manufacturing steel at Bhugaon, Dist. Wardha and in Thane District. At its Wardha plant, LSIL is a HT/ EHT consumer of MSEB receiving power at 220 kV. Initially, in 1994, LSIL's contract demand with MSEB was 9 MVA. By April 1996, the contract demand was increased to 100 MVA. For this purpose, LSIL paid Rs.9.05 lakh and Rs.415 lakh towards Service Connection Charges (SCC) and Service Line Charges (SLC), respectively, to MSEB in addition to Security Deposit (SD). As desired by MSEB, LSIL also handed over a developed plot of 62500 sq.m for setting up a 220 kV EHV sub-station meant exclusively for supplying power to LSIL.



4. According to the Petition, considering the downturn in business, power supply was subsequently reduced (at the hearing, LSIL clarified that this was a reduction in contract demand) to 90 MVA in March 1999, 88 MVA in August 2000, and 56 MVA in August 2001. This was mutually agreed between LSIL and MSEB and in accordance with the contract between LSIL and MSEB. Thereafter, at the end of 2002, considering the improved business situation, LSIL sought an increase in contract demand back to the earlier level of 90 MVA, for which it had already paid the required SLC, etc. and provided land for the sub-station. However, apart from additional SD of Rs.440 lakh, MSEB asked LSIL to pay Rs.221 lakh and Rs.6.9 lakh towards SLC and SCC, respectively, for restoration of contract demand to 90 MVA. After some correspondence between LSIL and MSEB, in which LSIL argued that these charges were not warranted since it had already paid for the infrastructure earlier, the contract demand was increased to 90 MVA and MSEB allowed the Petitioner to make payment in instalments. The Petition states that LSIL did not have any option but to accept MSEB's terms in view of its power supply requirements, though it had pointed out that these were not justified. Hence, LSIL now desired that the Commission intervene in the matter and direct MSEB to refund the money with interest.

5. In the above circumstances, the Commission directed MSEB to submit its detailed comments, which were furnished by MSEB vide its letter dated November 11, 2004. The MSEB in its Reply opposed the admission of the Petition, mainly on the grounds of jurisdiction stating that the said Petition seeks to challenge the MSEB's Conditions of Supply, which are of statutory nature and framed by MSEB in exercise of powers conferred on it under Section 49 read with Section 79(g) and (h) of the erstwhile Electricity (Supply) Act, 1948. The MSEB has further argued that the action taken by MSEB in the instant case of the Petitioner, to recover SLC for enhancement of Contract Demand from 56 MVA to 90 MVA is strictly as per provisions of the 'Conditions of Supply' and Circulars thereof, issued by the MSEB from time to time. Further, the Board has argued that the Commission may not have jurisdiction to decide whether the said charges were appropriate or even to interpret relevant provisions of the MSEB's Conditions of Supply, in view of the principle outlined under General Clauses Act, which states that whatever has been done under the previous Act shall continue to remain in force unless it is sought to be changed. In addition, MSEB has also argued that the Petitioner, having un-conditionally agreed to make payment in instalments, has exhausted the remedy available and therefore cannot now contest the issue of recovery of Service Line Charges.

6. In this context, LSIL filed a Rejoinder dated November 29, 2004. In its Rejoinder, LSIL has argued that MSEB's reply should not be admitted since it is time-barred and that the MSEB has stated it to be a limited response on admissibility of the Petition craving for interim relief, despite the Commission's directions to the MSEB to furnish its detailed comments before October 20, 2004. LSIL has further argued that while its Petition is restricted to the extent of correct interpretation of Condition No. 7 of Conditions of Supply, the Board has attempted to mislead the Commission by stating it to be a Petition that challenges the Conditions of Supply. LSIL has submitted that this is a case of dispute or difference between the consumer and MSEB that needs to be decided by the Commission in view of the powers granted to the Commission under Section 22 of the Electricity Regulatory Commissions Act, 1998. As regards the issue of jurisdiction of the Commission, LSIL has cited an Order dated April 7, 2004 issued by Hon'ble High Court, while granting leave to the Petitioner to approach the Commission. In response to MSEB's claim that its act of recovery of SLC and SCC once again for increase in demand from 56 MVA to 90 MVA is strictly in accordance with its Conditions of Supply and various circulars issued from time to time, the Petitioner has reiterated its stand that the MSEB does not have the authority to recover multiple times the cost of infrastructure from the same consumer and so also from multiple consumers.



7. The Commission heard the matter on December 21, 2004. During the hearing, the parties reiterated their respective positions as elaborated under their written submissions.

8. The MSEB has argued that the present Petition is not maintainable since the provisions of its Conditions of Supply, being statutory and binding at that time, are not open to challenge. MSEB has submitted that, though the Commission's jurisdiction to determine Service Line Charges under the provisions of Electricity Act, 2003 cannot be disputed, it also cannot be ignored that, under the erstwhile Electricity (Supply) Act, 1948, MSEB was authorized to prescribe such terms and conditions. In this context, the Commission notes that its Tariff Order dated May 5, 2000 in Case 1 of 1999 has already dealt with the issue of the Commission's jurisdiction in regulating the Conditions of Supply and 'other charges', and had ruled that -

*“After considering the entire Act, the Commission is of the view that the intention of the Legislature was to regulate the entire electricity industry, bring about transparency, promote competition, efficiency and economy in the activities of the electricity industry, safeguard the interests of the consumers and ensure that the entire business of electricity generation, transmission, distribution and supply are conducted on commercial principles. In view of the above, the Commission is of the opinion that the expression “tariff” means not just the rates at which the supply of electricity can be charged but also includes charges relating to SLC, meter rent, fixed service connection charges, etc. The Commission, therefore, overrules the objection of the MSEB, and asserts that it has the jurisdiction over the terms and conditions of the supply of electricity to the extent mentioned above.(Emphasis added) (Ref. Clause 1.2, Page 43 of Order dated 05-05-2000).*

As regards Commercial Circulars for determining and charging SLC and SCC, the Commission in the same Tariff Order had directed the MSEB that such circulars issued after formation of the Commission and without its approval should be kept in abeyance. The Commission had directed the MSEB to obtain the Commission's approval before giving effect to the Commercial Circulars issued after formation of the Commission. Further, the Hon'ble High Court, Bombay in its Order dated February 24, 2003 in the matter of Appeal No. 1 of 2001 in Case No. 1 of 1999 and Appeal No. 2 of 2001 in Case Nos. 10 & 11 of 2001 has ruled that -

*“Having regard to the specific provision contained in sec. 22 and sec. 29 of ERC Act and the provisions of above Regulations, we have no hesitation to hold that MERC has jurisdiction in respect of the terms and conditions of supply of electricity in so far as tariff involved therein. Section 52 of the Act gives overriding power to ERC Act and, therefore, the provisions of ERC Act would prevail over the Electricity Supply Act as well.”*

Thus, it is clear that the Commission is empowered to regulate the Conditions of Supply and 'other charges', not only as per the provisions of Electricity Act, 2003 as contemplated by the MSEB, but that it has been empowered to regulate the same since its inception, under the provisions of the erstwhile Electricity Regulatory Commissions Act, 1998. However, the Commission recognizes that the determination of 'other charges' (including SLC/ SCC) is not the subject matter of the current Petition. Instead, it is the proper application of prevalent charges and interpretation of MSEB's Conditions of Supply and Commercial Circulars in this regard which is under dispute and needs to be addressed.

9. MSEB has submitted that the action taken by it in the instant case of the Petitioner to recover SLC for enhancement of Contract Demand from 56 MVA to 90 MVA is strictly as per the provisions of the Conditions of Supply and relevant Circulars issued by the Board from time to time. During the hearing, MSEB further argued that recovery of the said charges is in line with the Condition of Supply No. 7 and in accordance with the Departmental Circular No. 504, which



was issued way back in May 27, 1992. The Commission notes that the Condition No. 7 (i) to (vii) of the MSEB's Conditions of Supply deals with provisioning of supply to High Tension/ Extra High Tension consumers, and the applicable Service Line Charges and Service Connection Charges. The Commission further notes that the MSEB had subsequently revised these charges through its Circulars No. 546 dated March 24, 1995 and later through Circular No. 631 dated October 22, 1999. However, the Circular No. 631 was held in abeyance pursuant to the Commission's Tariff Order dated May 5, 2000 (in Case 1 of 1999) through MSEB's Circular No. 647 dated June 27, 2000. Accordingly, in the instant case, the applicable Circular would be Circular No. 504 dated May 27, 1992. Further, while the Commercial Circulars specify the rates for charging SLC and SCC, their applicability is essentially guided by the Condition No. 7 of the Conditions of Supply, as amended upto July 31, 1998. Thus, the applicable Circular as well as Conditions of Supply predate the Commission's formation. Hence, the Commission is not evaluating the merit of charges contained in the said Circulars, and has limited itself to verifying whether the extant Circulars and Conditions of Supply have been applied appropriately.

10. The Commission notes that, according to sub-clause (v) of Condition No. 7, the consumer can seek supply for new load or increase in load, and the Board is entitled to charge SLC/ SCC for provisioning such supply. However, charges in case of additional loads are to be recovered only to the extent of new demand, i.e., excluding load already connected. The relevant extract of the Condition No. 7(v) is as under –

*“v) Every High Tension/ Extra High Tension Consumer shall pay the following (non refundable) fixed service connection charges over and above the amount to be paid as per condition 7 (i) for new loads demanded by him and in case of additional load only to the extent of the new demand i. e. excluding load already connected.”*

In the instant case, LSIL had sought to revise its Contract Demand from 56 MVA to 90 MVA, while its connected load has remained unchanged. In fact, in the earlier instances when the Contract Demand was reduced from 100 MVA to 90 MVA (w.e.f. March 1, 1999), from 90 MVA to 88 MVA (w.e.f. August 25, 2000) and from 88 MVA to 56 MVA (July 24, 2001), the connected load remained unchanged, as is evident from the correspondence exchanged amongst the Parties. Thus, it is clear that LSIL, through its application, has sought revision in 'Contract Demand' and not an increase in 'connected load'.

The existing infrastructure already installed for the purpose would be utilized for catering to this revision in Contract Demand. The Commission notes that LSIL has already paid its contribution towards creation of the necessary infrastructure, including 220 kV EHV substation, and has provided the developed plot for the sub-station during April 1996 when it increased its contract demand to 100 MVA with corresponding increase in connected load. Moreover, the Commission notes that as per Condition 7(i) and Circular No. 504, the Service Line Charges are to be recovered towards providing power supply facility at appropriate voltage level upto the consumer's premises and for recovery of cost towards the relevant common network. The MSEB has not established how it has incurred additional capital expenditure or infrastructure cost for catering to such restoration of Contract Demand of the LSIL to the earlier levels. In the instant case, the Petitioner's Contract Demand has been reinstated without creating any additional infrastructure, since the existing surplus capacity available with the said 220 kV EHV substation (including transformer capacity) was sufficient to cater to the proposed revision in Contract Demand. Accordingly, the Commission finds that recovery of SLC and SCC towards revision in Contract Demand from 56 MVA to 90 MVA in the instant case is not strictly in accordance with the Board's own Conditions of Supply and relevant Circulars.



11. During the hearing, the MSEB has argued that due to frequent revision in Contract Demand, the MSEB has been unable to recover the maintenance cost of the line and earn reasonable return on its investment. Besides, the MSEB had to reallocate the power to other consumers due to the Petitioner's action of reducing its Contract Demand from 88 MVA to 56 MVA. Hence, the Board had informed the Petitioner through its letter dated August 2, 2001, while granting approval for reduction in Contract Demand from 88 MVA to 56 MVA, that any enhancement in Contract Demand, if required, would attract payment of SLC and other charges which, according to the Board, has been agreed to by the Petitioner. In this context, the Commission notes that SLC and SCC are not intended to recover the maintenance cost associated with service line or substation infrastructure, as there already exists a separate mechanism for recovery of such maintenance costs through Annual Revenue Requirement process. As regards return on investment, the Commission notes that the Condition of Supply No. 7 (1)(a) provides for a minimum guaranteed revenue to MSEB for a period of two years, where the consumer has contributed for the capital cost of works for receiving power supply, which is the case in the instant Petition. The relevant extract of the said Condition is as under -

*"a) The consumer who has contributed the estimated capital cost of works of extending power supply as per condition No. 7 (i) (a) above such consumers will have to pay the annual guaranteed revenue return equivalent to 20% on the amount of estimated capital cost for the period of not less than 2 years from the date of declaration of the availability of the power supply."*

In this situation, MSEB's claim for return on investment is not appropriate, and the same has to be guided by the minimum guaranteed revenue return as specified in the Condition above. MSEB has neither claimed non-compliance of the above condition, nor ascertained how it is affected on the above count. As already pointed out at para 9 of this Order, for the revision in Contract Demand, the Board can recover expenses through SLC/ SCC for the works undertaken only as per Condition 7(i) and 7(v) of its Conditions of Supply, even if the power has been reallocated to other consumers.

12. Thus, the Commission rules that the recovery of SLC (Rs 221 lakh) and SCC (Rs 6.9 lakh) by the MSEB in the instant case is not in accordance with its Conditions of Supply and the relevant Commercial Circulars applicable in the instant case. Accordingly, the MSEB is directed to refund the amount of Rs 227.9 lakh collected by the MSEB against SLC and SCC to the Petitioner within one month, together with interest cost at the rate of 12% p.a. for the period from the date of receipt to date of refund by adjustment in the energy bill or other means. (The interest rate of 12% has been determined in accordance with the prevailing interest rate of 12% for arrears in payment of consumer bills without time escalation.)

13. Recently, MSEB has given way to three functional successor entities and a holding company (the distribution function having been vested in the Maharashtra State Electricity Distribution Company). However, the term 'MSEB' has been used throughout this Order for convenience.

With this Order, the Commission disposes of this Petition.

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr. Pramod Deo)  
Chairman, MERC



(A. M. Khan)  
Secretary, MERC