

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**13<sup>th</sup> floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai-400 005.**  
**Tel. 22163964 / 22163965, Fax No. 22163976**  
**E-mail: [mercindia@mercindia.org.in](mailto:mercindia@mercindia.org.in)**  
**Website: [www.mercindia.org.in](http://www.mercindia.org.in)**

**CASE NO.41 OF 2005**

**In the matter of**  
**Petition filed by M/s. Menon Ancillaries & Siddharth Industries -**  
**Complaint against violation of Sections 126, 135 and 138 of Electricity Act, 2003**  
**and non-compliance of directions made under Commission's letters dated 8.4.2005**  
**and 19.7.2005 by Maharashtra State Electricity Distribution Company Limited.**

**Dr. Pramod Deo, Chairman**  
**Shri. A. Velayutham, Member**  
**Shri S.B. Kulkarni, Member**

**ORDER**

**Dated: 13<sup>th</sup> July, 2006**

M/s. Menon Ancillaries & Siddharth Industries, Pune, filed a Petition on 21<sup>st</sup> December, 2005, essentially seeking compensation under Section 57 (to the extent of Rs.10,00,000/-) and refund under Section 62(6) of the EA, 2003 for the amounts paid by them to MSEDCL. The Petitioners have contended that the officers of MSEDCL who have been made Respondents in the Petition are guilty of offences punishable under Sections 142, 146 and 150 of the EA, 2003 having contravened the provisions of Sections 126, 135 and 138 of the said enactment to the extent they have misapplied the provisions thereof.

2. The facts of the case as brought about by the Petitioners, briefly stated, are as under:
- (i) On a routine periodical inspection carried out on 13<sup>th</sup> June, 2001 at the premises of the Petitioners by the Respondents, it was reported that there was no lead seal (testing seal) found to have been provided in the meter.
  - (ii) On a spot inspection, the Directorate of Vigilance and Security (Pune Region) Flying Squad – Pune (Urban) reported, by way of its Spot Inspection Report dated 14<sup>th</sup> February 2004, that there was no seal in the meter box, no testing seal on the meter body, that paper seal No. 01K0025378 was found to be tampered and the meter terminal cover had no seal.
  - (iii) The Deputy Executive Engineer, Flying Squad, Pune, Respondent No. 6 herein filed FIR with the Police authorities on the same day the Spot Inspection was conducted i.e., on 14<sup>th</sup> February, 2004 alleging offence of theft of electricity committed by the Petitioners under Sections 135 and 138 of the EA, 2003.



- (iv) Supply was disconnected on 21<sup>st</sup> February, 2004 and the meter was removed. However, a new meter was provided on 23<sup>rd</sup> February, 2004 and supply restored on payment of Rs.1,81,065/- against provisional bill of Rs. 9,05,324/-.
- (v) On several occasions during the period 15<sup>th</sup> March, 2004 till 10<sup>th</sup> October 2005, the Petitioners made representations against the mis-application of the provisions of Sections 126, 135 and 138 of the EA, 2003 before diverse officers, viz., Superintending Engineer (PRC), Pune, being Respondent No. 4 herein, Executive Engineer (Mulshi Division) Pune, being Respondent No. 5 herein, Director (Vigilance and Security), Mumbai, Deputy Executive Engineer (Flying Squad), Pune, being Respondent No. 6 herein.

3. The grounds, as brought about by the Petitioners, for seeking the desired reliefs, are summarized as under:

- (i) MSEDCL has contravened the provisions of Section 126 of EA, 2003 inasmuch as the fact that the Deputy Director (V&S) stationed at Pune has represented as the "assessing officer" whereas he is not entitled to act as such pursuant to State Government Notification No. IEA 4003/CR/1356/NRG-4 dated 24<sup>th</sup> October, 2003 designating specific officers of MSEDCL as "assessing officer" for the purposes of Section 126. There has been a clear violation by MSEDCL of the provisions of Section 126 by their conduct of issuing a fresh provisional bill under Section 126 but failure to issue the final bill.
- (ii) MSEDCL has contravened the provisions of Sections 135 and 138 of the EA, 2003 since there being no specific allegation of theft of electricity made and that the meter was certified to be "O.K" in the spot inspection report dated 14<sup>th</sup> February 2004, the Respondents filed FIR with the police authorities alleging offences committed by the Petitioners under Sections 135 and 138 of the EA, 2003.
- (iii) MSEDCL has contravened the provisions of Section 56 of the EA, 2003 by disconnecting supply to the Petitioners on 21<sup>st</sup> February, 2004 without giving atleast fifteen clear days notice in writing as specifically contemplated under Section 56.
- (iv) MSEDCL has contravened the provisions of the EA, 2003 by applying Condition No. 31(e) of the MSEB Conditions of Supply which were applicable under the laws that have been repealed by the EA 2003, for serving provisional bill of Rs. 9,05,324/- as an assessment for the alleged theft of electricity. Further, by conducting the act of restoring supply on 23<sup>rd</sup> February, 2004 after making the Petitioners pay Rs. 1,81,065/- as 20% of the provisional bill, the Respondents are guilty of misapplying and violating the provisions of Sections 126, 135 and 138 of the EA 2003.
- (v) MSEDCL requires to refund Rs. 1,81,065/- along with interest due thereon, being the amounts that the Petitioners were made to pay to get the supply restored.



- (vi) Owing to non-compliance of the terms of letters Ref. No. MERC/Cons. Grievance/2005/0883 and 1495 dated 4<sup>th</sup> April 2005 and 19<sup>th</sup> July 2005 sent by the Commission's office to the Respondent, the Respondents are liable to be punished in accordance with the provisions of Sections 142 and 146 since such omission would amount to contravention of directions issued by the Commission as contemplated under the said provisions.

4. At the admissibility hearing held on 28<sup>th</sup> February 2006, while opposing on the issue of maintainability of the Petition, Smt. Deepa Chavan, Counsel for MSEDCL submitted that Sections 142, 146, 150, 57 and Section 62(6) of EA, 2003 were not applicable in the present case and that the Commission has already decided a point of law in the matter of M/s. Jai Bamleshwari Rice Mill, Gondia in Case No. 14 of 2004 by its Order dated 24<sup>th</sup> November, 2004, which as a precedent, is applicable to the present case. As per Counsel, the Petitioners have sought to invoke the provisions of Sections 142 and 146 of EA, 2003 based on the premise that the Respondents have not complied with the terms of letters Ref. No. MERC/Cons. Grievance/2005/0883 and 1495 dated 4<sup>th</sup> April 2005 and 19<sup>th</sup> July 2005, sent by the Commission's office to the Respondent. As per Counsel, the said letters addressed by the then Secretary of the Commission to the Respondents do not constitute "directions" issued by the Commission, as contemplated by Section 142 or Section 146. Elaborating further, Counsel pointed out that the said letters merely stipulate, that MSEDCL is required to look into the matter and do the needful in relation to the communication received from a certain consumer (being the Petitioners herein), a copy of which was appended to such letters. This would not amount to a direction under Section 142 of EA, 2003, meriting invocation of penal provisions under EA, 2003 since directions are usually passed at the time of adjudication of matters and in this case, there has neither been any adjudication by the Commission nor are such letters part of any adjudication proceedings.

5. It is submitted on behalf of the Petitioners that the facts relating to M/s. Jai Bamleshwari's Rice Mill, Gondia matter are different than that in the present case. It is submitted that in the matter of M/s. Jai Bamleshwari Rice Mills, reliefs were sought under Sections 126 and 135 of EA, 2003 whereas the Petitioners were seeking to invoke penal action against the Respondents for contravening the provision of EA, 2003. As regards the letters Ref. No. MERC/Cons. Grievance/2005/0883 and 1495 dated 4<sup>th</sup> April 2005 and 19<sup>th</sup> July 2005, sent by the Commission's office to the Respondent, it is the contention of the Petitioners that the contents thereof would suggest that MSEDCL were directed to act in a particular manner as regards the Petitioners

6. The Petitioners have further contended that MSEDCL have issued a bill dated 27<sup>th</sup> February, 2004 under Sections 135 and 138 of EA, 2003 whereas there is no provision for assessment to be made for theft under such statutory provisions. It has also been submitted that assessment has been made by MSEDCL applying Condition No. 31(e) for a period of 36 months whereas the EA, 2003 stipulates a much lesser period for such assessment. Therefore, there is a clear contravention of Sections 135 and 138 of EA, 2003 by MSEDCL. It has also been pointed out that MSEDCL have admitted that it was a mistake on their part to apply Sections 135 and 138 of EA, 2003 to the case of the Petitioners and since Section 126 of EA, 2003 would apply. However, on the Petitioners seeking withdrawal of the case under Sections 135 and 138, MSEDCL had not done so. The Petitioners have further submitted that the Respondents have not only failed to carry out the assessment as per the provisions of Section 126 but have also failed to issue any notice or give opportunity to the Petitioner to reply. Moreover, supply was disconnected without according the Petitioners statutory notice as required to be given in accordance with Section 56.



7. Shri. Nikit Abhyankar, representing Prayas Energy Group (consumer representative organization authorized on a standing basis under Section 94(3) of EA, 2003 pressed for admission of the matter based on his contention that the Respondents were guilty of clear-cut violation of the procedures set out in the EA, 2003. Shri. Ashwin Treasurer, on behalf of MCCI, also pressed that the matter be admitted as the assessment was done by MSEDCL on 14<sup>th</sup> February, 2004 by application of Condition 31(e) of MSEB Conditions of Supply which is contrary to EA, 2003.

8. Counsel for the Respondents submitted that even if it is assumed that MSEDCL has contravened the provisions of Section 126 of EA, 2003, Section 127 provides the remedy and similarly even if it could be assumed that contravention of Section 135 has been committed then again a different remedy/ recourse is available to the consumer under EA, 2003.

9. The Commission has considered the submissions made by the parties. The short preliminary point is whether it would be appropriate for the Commission to invoke the penal provisions of Sections 142 and 146 in the circumstances of the present case. The Commission observes that these provisions are generic in nature, and have to be read with the provisions of the EA, 2003 that are purported to have been violated, which in the present case relate to the provisions under Sections 126 and 135. The procedure, dispensation and assessing authority have been set out in Section 126. The appellate authority has also been indicated in Section 127. Thus, the Commission cannot make assessment under Section 126 or entertain appeals against such assessment under Section 127. Similarly, Section 135 sets out the provisions in cases of alleged theft, and Chapter XV of EA, 2003 refers to the forum for trial of such cases and hence, the Commission cannot try cases under Section 135.

10. As regards the prayer for refund of illegal recoveries by the Respondents, the Commission observes that the alleged illegal recovery has been made as an assessment against alleged unauthorized use of electricity by the Petitioner under Section 126 of EA, 2003. Therefore, whether there is at all a case of unauthorized use of electricity, or whether the recovery made as an assessment against alleged unauthorized use of electricity is illegal, or whether the assessment made against alleged unauthorized use of electricity is correct, or whether the same has been made as per correct formula or whether any refund is due are all matters which will be decided by the competent authority, which in the present case is the appellate authority under Section 127. The Commission, therefore, does not see any role for itself, either in ascribing to itself the jurisdiction that falls within the purview of the appellate authority under Section 127 or in invoking the provisions of Sections 142 or 146 in the matter.

11. Similarly, as regards the prayer of the Petitioner to hold the Respondent guilty of the contravention of the provisions of Section 135 of EA 2003, from the submissions made by the parties the Commission notes that, criminal proceedings have been initiated by MSEDCL against the Petitioner under Section 135. Whether the same are maintainable and whether MSEDCL have followed due procedure and process of law, and whether there is at all a case made out under Section 135 are all matters which will be decided by the competent Court before which the Petitioner will have his say, and not by the Commission. The question of the Commission ascribing to itself that jurisdiction and invoking the provisions of Section 142 or 146 does not, therefore, arise.

12. As regards the prayer for award of compensation of Rs. 10,00,000/- for financial loss and mental worries is concerned, the Commission declines to grant the same since the regulations specified by the Commission under Section 57 of EA, 2003 does not provide for payment of any such compensation.



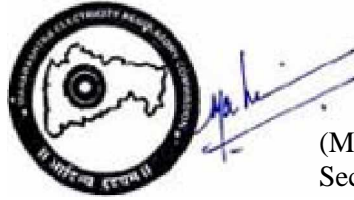
13. On the Petitioners contention that the Commission had issued certain directions to MSEDCL for its compliance which the latter has not complied with, the Commission clarifies letters and correspondences that are merely forwarded to MSEDCL for taking necessary/ appropriate action and/or for giving reply, do not amount to “directions” as contemplated under Sections 142 or 146 of the EA 2003. Directions of the Commission expressly state so or cite the statutory provisions under which such directions are issued. In the present case, the Commission’s office had forwarded to MSEDCL, copies of letters that the Petitioners had principally addressed to MSEDCL (with copies to the Commission) raising its grievances, for taking necessary action and reply to the Petitioners. These do not amount to “directions” as contemplated under Sections 142 or 146 of the EA, 2003 since no direction has been given by the Commission under any specific statutory provision, and, therefore, the contents of the letters sent by the Secretary, MERC, cannot be treated as such. On this account, the Commission declines to invoke the provisions of Sections 142 or 146 of the EA, 2003.

In view of the above observations, the Commission declines to admit the Petition. The Petition is accordingly dismissed.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr. Pramod Deo)  
Chairman



(Ms. Malini Shankar)  
Secretary, MERC