

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 17 of 2008**

In the matter of  
Petition filed by M/s. Sangli District Powerloom Owners Association Ltd.,  
seeking review of Commission's Order dated 18.05.2007 passed in  
Case No. 65 of 2006.

**Shri A. Velayutham, Member**  
**Shri S. B. Kulkarni, Member**

M/s. Sangli District Powerloom Owners Association Ltd.,  
Udyog Mandi, Madhavnagar  
District Sangli (MS) ... Petitioner

Versus

1. Maharashtra State Electricity Distribution Co. Ltd.,  
Through its SE (TRC)  
5<sup>th</sup> Floor, Prakashgad, Bandra (East),  
Mumbai – 400 051.
2. Government of Maharashtra  
Through its Energy Secretary  
I.E. & L. Department [Energy – 3]  
Mantralaya, Mumbai 400 032  
... Respondents

**ORDER**

**Dated: July 24, 2008**

M/s. Sangli District Powerloom Owners Association Ltd., filed a Petition on April 3, 2008 seeking a review of the Commission's Order dated May 18, 2007 in Case No. 65 of 2006 to the extent of applicability of LT-V tariff to power loom consumers. By the said impugned order, the Commission has determined Annual Revenue Requirement (ARR) of Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) for the Control Period from FY 2007-08 to FY 2009-10 and Tariff for FY 2007-08. It is averred in the Review Petition



that the said impugned Order creates imparity and discrimination amongst the consumers of the same category and causes grave injustice to the consumers whose connected load is more than 20kW / 27 HP. It is averred in the Petition that in the background of the policy of the State Government of Maharashtra (“GOM”) in respect of powerloom consumers in general and especially in the background of the concessional package sanctioned by GOM in its cabinet meeting held on 06-02-2008, the impugned order needs reconsideration in the abovementioned changed circumstances for the effective implementation of the said concessions. The Petitioner has prayed for separate uniform tariff without any classification based on either consumption level or connected load, which will not be higher than the average cost of supply and inclusive of the concessions declared by the GOM, and that this should be framed and inserted into LT-V tariff, creating a sub-category for powerloom consumers.

2. On the issue of limitation, the Petitioner submitted that the impugned order having been passed on May 18, 2007, the Review Petition should have been filed within 45 days from the date of passage of the said impugned order as specified in Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004, that is on before July 2, 2007. However, the present review petition is filed on account of a subsequent event giving retrospective effect and as such as the cause of action to the present review petition arose on February 26, 2008 and therefore, the Review Petition is filed within the stipulated time. It is averred that in case there is any delay, the same be condoned.

3. Shri. Pratap Hogade, President, Maharashtra Rajya Veej Grahak Sanghatna filed an intervention application on June 9, 2008. It is averred therein that the Commission had divided categories of LT-V into two viz., less than 20 kW and more than 20 kW and in those two categories there are two different electricity charges viz. Rs.3/- per unit and Rs.4/- per unit. The State Government had introduced concession in the tariff charges for powerloom industry consumers since 1994 taking into consideration important status of Powerloom Industries, capacity of employment etc., in the State. Time and again, the concession rates are given uniformly for all by the State Government. Till December 2007, the State Government fixed the rate at Rs.1.60 per unit uniformly for all Powerloom Industry Consumers. Because of this Powerloom Industry consumers under the low voltage and high voltage category were paying electric bill at the same rate and because of that there was no difference in the production expenditure. The State Government has taken decision on February 26, 2008 and decided that with effect from 1<sup>st</sup> January, 2008, the State Government would give percentage wise concession in the bills raised at the rates determined by the Commission. Because of this, powerloom industry consumers have suffered tremendous distinction in the electric bills and expenditure on production and because of that, the powerloom business above connected load of 20 kW have been closed and/or in financial crisis. To remove this distinction, they are intervening in the Review Petition. These powerlooms are situated in the semi-urban and rural areas viz. Ichalkaranji, Vita, Solapur, Binwandi, Malegaon, Nagpur, Kamthi, Vadavni, Kurundwad, Rendal, Vadgaon, Kabnur, Korochi, Madhavnagar, Tarapur, and Murbad. To establish this business in the country and international market, the



State Government has time and again provided facilities and because of these facilities day by day there is growth in the powerloom business. It is also averred in the intervention application that looking to the extraordinary nature of the business initially the Commission decided to make different category and different rates. Wherever meters were not available initially the Commission declared flat rate of Rs.300/- per powerloom and thereafter Rs.450/- per powerloom. Wherever meters were available upto 1000 units, the Commission had given concession in the rate.

On the outcome in difference of rates, it is stated that the Commission has made applicable two different electricity charges viz. 300 paise per unit and 400 paise per unit. After using 1 unit, there is approximately 3 to 3.5 meter production of cloth, hence, in the production expenditure of 1 metre of cloth by the powerloom consumers with sanctioned load over 20 kW, there is a difference of 30 to 35 paise. The powerloom consumers with sanctioned load above 20 kW are unable to sell the cloth because of the difference of 30 paise to 35 paise. The profit margin in this business is lower than 30 paise to 35 paise. Because of this, those powerloom consumers who are above 20 kW are facing financial difficulties, because of which they are in danger of having to close their business. The State Government has time and again given equal concession because of which, there was no difficulty. But while giving concession from 1<sup>st</sup> January 2008, the State Government has taken into consideration the divisions in connected load of less than 20 kW and more than 20 kW made by the Commission. This decision was published on 26<sup>th</sup> February, 2008.

Many customers are operating under one powerloom shed. There are hundreds of instances where the distribution company has not provided partition or wall and because of this there is only one connection. These powerloom consumers are individually using electricity less than 20 kW, but because of receiving supply under one connection with sanctioned load above 20 kW, they have to pay higher electricity charges. Those powerloom consumers who are individually using less than 20 kW have to suffer and they are in financial difficulty. If the distribution company provides independent electricity connection to the powerloom consumers in common shed then customers' problem will be solved and for this, the intervention of the Commission is requested for the issuance of appropriate orders.

The rates applicable for powerloom consumers in other States have been mentioned as under:

<u>State</u>	<u>Fixed rate applied by Commission</u>
Andhra Pradesh	174 paise/unit
Madhya Pradesh	330 paise/unit
Tamilnadu	upto 500 units 140 paise/unit 501 to 1500 units 225 paise/unit Above 1500 units 250 paise/unit.



The intervenor has sought for the following reliefs:

- (1) A separate sub-category should be created for Powerloom consumers within LT-V industrial category;
- (2) The fixed charges for all consumers in the powerloom sub-category should be fixed as Rs.150/- per month and energy charges should be fixed at 300 paise per unit.
- (3) The above separate categorisation and tariffs should be implemented from 1<sup>st</sup> January 2008;
- (4) Henceforth, the separate categorisation for powerlooms within LT industrial category should be continued, and there should be no differentiation in tariffs on the basis of connected load;
- (5) Direct the distribution licensee appropriately in the context of providing separate connections to all powerloom consumers operating under one common hall/shed, in accordance with Regulation No.3.4.3 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations.

4. An admissibility hearing was held in the matter on June 10, 2008. Shri. S.C. Karandikar, Advocate appeared for the Petitioner. Shri. Abhishek Khare, Advocate alongwith Shri. R.G. Sonawane, SE (TRC) appeared for MSEDCL. Shri. Pratap Hogade appeared on behalf of Maharashtra Rajya Veej Grahak Sanghatna. Shri. S.C. Karandikar submitted that after the passage of the impugned order, the Government of Maharashtra issued the aforesaid Circular by which they have granted certain concessions to these power-loom consumers. But the said circular gives retrospective effect to the tariff. Shri. Abhishek Khare vehemently opposed the Review Petition on grounds of delay in filing the same.

5. The Commission is of the view that the Government's Order ("GO") dated 26<sup>th</sup> February 2008 requires to be examined in the first instance. The said GO, reference *TARIFF-2008/P.N.14/Energy-3* (annexed as Annexure I to the Review Petition) has been issued in vernacular. In English, the relevant extracts are as under:

*"As per the Government's Order dated 17<sup>th</sup> October 2007 the powerloom consumers' in the state enjoy concession in the electricity charges which are applicable from 1<sup>st</sup> April, 2007. The government has been considering improvement in the subsidized tariff because the powerloom consumers were not satisfied with the said order.*

**GOVERNMENT'S DECISION:-**

*In the context of giving electricity supply to powerloom consumers at subsidized rates, in the Cabinet Meeting held on 6<sup>th</sup> February 2008, after discussions, the following discussions have been taken:*

- 1) *The concessional rate specified under the Government's order dated 28<sup>th</sup> August, 2006 will be applicable from 1<sup>st</sup> April, 2007 to 31<sup>st</sup> December, 2007.*



2) *The modified concessional rate specified under the Government's Order dated 17<sup>th</sup> October, 2007 will be applicable from 1<sup>st</sup> January, 2008 as under:*

- a) The Low voltage powerloom consumers, who are having connected load of 27 Horsepower or lower, will get 100% concession in fixed charges, and 50% concession in energy charges, fuel adjustment charges and additional electricity charges (Additional Supply Charges).*
- b) The Low voltage powerloom consumers, who are having connected load of more than 27 Horsepower will get 100% concession in fixed charges, and 40% concession in energy charges, fuel adjustment charges and additional electricity charges (Additional Supply Charges).*
- c) The powerloom consumers who are getting high voltage supply will get 40% concession in fixed charges, energy charges, fuel adjustment charges, and additional electricity charges.*

3) *Currently, those handloom businessmen who are being charged commercial rate for electricity consumed for lighting, fans, etc., all such handloom consumers will be charged at domestic rates. The reduction in revenue of the distribution licensees on this account will be financed by the State Government."*

The contention is that the above GO dated 26<sup>th</sup> February 2008 has been issued on the basis of the impugned tariff Order passed by the Commission and as such, the GO being difficult to implement as it would be harsh on the consumers, the Commission should modify its impugned order so that the said GO would result in giving a uniform treatment to all powerloom consumers. The said contention will not be maintainable because firstly, the matter is time barred and the immense delay of a period nearing a year, cannot be condoned. The Petitioners had all the opportunity to approach the Commission earlier. The Review Petition suffers from serious delay. Moreover, the tariff can be a differential tariff as under the impugned order. This is in accordance with Section 62(3) of the EA 2003, which provides as under:

*"(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."*

In view of the above, the Commission is of the finding that the grounds for review as provided in Regulation 85(a) are not satisfied. There is no mistake or error apparent on the face of the record of the impugned order. The ground of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the Petitioner or could not be produced by it at the time when the impugned order was passed, is also not satisfied. It is certainly not a sufficient reason to consider a review on the basis of the argument that the impugned order would need to be modified because in that



case the GO would be modified giving uniform impact of the concessions, or else powerloom consumers / industries would suffer financially.

6. The Commission is of the view that in accordance with Section 65 of the Electricity Act, 2003 (“EA 2003”), it is the State Government which is required to pay subsidy in advance and in such manner as may be specified by the Commission. If the payment is not made in advance and in such manner as may be directed by the Commission, the tariff fixed by the Commission shall be applicable. It is the option of the State Government to subsidize or not to subsidize. It is also the option of the State Government, in case they decide to give subsidy, to determine the extent to which the subsidy shall be given. Section 65 reads as under:-

*“65. If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, within in advance in the manner as may be specified, by the State Commission the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:*

*Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.”*

The aforesaid statutory provision is clear with regard to subsidies; that if the State Government requires the grant of any subsidy to any consumer in the tariff determined by the Commission under Section 62, then it is the responsibility of the State Government to pay in advance to compensate the licensee affected by the grant of subsidy. In this case if the Commission determines the tariff de hors the subsidy, in no way, the Commission can be made responsible to ensure that the consumer gets subsidy from the Government as it is a post tariff fixation subsidy.

In view of the above, the present Review Petition stands dismissed as not maintainable. As the Petition itself is not maintainable, the question of allowing the intervention application does not arise.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member



(P.B. Patil)  
Secretary, MERC