

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 19 of 2008

In the matter of
**Petition of M/s. Vidarbha Industries Association seeking Clarification of Order
dated February 7, 2007 passed in Case No.59 of 2006.**

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

Vidarbha Industries Association
1st Floor, Udyog Bhawan
Civil Lines
Nagpur

... Petitioner

Versus

Maharashtra State Electricity Distribution Company Ltd
Prakashgad, Bandra (E),
Mumbai 400 051.

... Respondent

ORDER

Dated: July 24, 2008

Vidarbha Industries Association (“VIA”) filed a Petition on 30-4-2008 seeking certain clarifications from the Commission’s Order dated February 7, 2007 in Case No.59 of 2006 with respect to application of continuous process industry tariff.

2. It is averred in the Petition that the Commission issued the tariff Order for MSEDCL with effect from 1-10-2006 which was applicable for a period upto 30-4-2007. According to this tariff, there were two categories in HT1 industrial tariff, i.e., continuous industry and non-continuous industries. The tariff decided for continuous industries was Rs.350/- per kVA demand charges and Rs.2.15 per kWh energy charges and the tariff decided for non-continuous industries was Rs.350/- per kVA demand charges and Rs.2.85 per kWh energy charges. It is further averred in the Petition that the Commission issued an Order dated 7-2-2007 in Case No.59 of 2006 in the matter of a review petition filed by MSEDCL and held at Clause 7 (iii) of this Order that:



“...The Commission clarifies that the Continuous and Non-Continuous categories are differentiated based on the continuous or non-continuous nature of the process adopted in the industries and not based on whether the industries are connected to express feeders or non-express feeders. It is obvious that a certified continuous process industry availing of uninterrupted power supply and paying additional supply charge (ASC) of 42% can not be on a mixed non-express feeder subjected to load shedding. The Commission clarifies that the Development Commissioner of Industries (DCI) or similar authority designated by the State Government are the appropriate forum to certify whether an industry is a continuous process industry or a non-continuous process industry. Industries need to submit required certifications from State Industrial Development Authorities to avail the tariff allocated for continuous process industries.”

3. It is averred in the Petition that District Industries Centers were authorized to issue continuous process certificate as per Maharashtra Govt. Industrial Power & Labour Department letter dated 4-4-2007. MSEDCL issued a Commercial Circular No.52 dated 7-5-2007 in light of Commissions Clarificatory Order dated 7-2-2007 issued in the Petition of MSEDCL dated 5-12-2006, which states as under:

- i) *All the HTI category consumers will have to produce the necessary certificates of continuous or non-continuous i.e. in case the consumer wants to avail the continuous industry tariff certificate will be necessary from the Competent authority as per earlier provisions or as per G.R. dated 4-4-2007 (i.e. G.M., DIC and above).*
- ii) *MSEDCL will be following the provisions of Circular No.47 only for a further period of 45 days from the date of the issue of this circular (upto 15th June 2007).*
- iii) *These provisions will be followed only respect of the billing period from 1st October 2006 to 31st March 2007 as stipulated in the tariff order.*
- iv) *After the period of 45 days in case of industries who have not submitted the continuous process industries certificate, the same will be treated as non-continuous industry and will be charged accordingly for the period from 1st October 2006 to 31st March 2007.*
- v) *In case a certificate is submitted by a consumer from the General Manager, DIC as per the G.R. or by a Competent Authority as per earlier provisions, the same should be vetted by the S.E. by way of physical verification, if necessary, and if satisfied, the status can be confirmed to the I.T. Department. This verification is very crucial, since this will have a direct bearing on the applicable tariff.*
- vi) *In case of any doubt or difference of opinion with regards to continuous nature of the industry, the same shall be submitted to the area E.Ds. in H.O. in the attached proforma along with observations of S.E. of the Circle Office within a period of 15 days from the date of receipt of certificate by the Circle Office. The debit/credit for disputed cases will be passed on to the consumers only after the final decision of the committee which has been constituted vide letter dated 9.4.2007 of the Development commissioner.*



- vii) *In case the Development commissioner of industries has issued any certificate with regards to continuous nature, the effect of the same shall be given immediately.*
- viii) *In case of any credit/debit entries, the effect of the same shall be passed on to the consumer within the next billing cycle.*
- ix) *In case of any dispute or difference of opinion between S.E. of the Circle and the certificate given by G.M., DIC or by a Competent Authority as per earlier provisions and the cases of which are referred to area E.Ds in H.O. the debit/credit will be passed on to the consumers only, after the final decision of the committee which has been constituted vide letter dated 9.4.2007 of the Development Commissioner.*
- x) *It is once again informed that these provisions shall be intimated to all the HTI consumers, about the necessity of producing the certificate within a period of 45 days and in case the same is not submitted by the HTI consumer, then the industry will be treated as non-continuous process industry and the bills will be revised (if necessary only) on lines of MERC tariff order dated 20.10.2006.*

4. It is averred in the Petition that Circular No.52 dated 7-5-2007 in which as per point No.s 2, 3 & 4, the industries were permitted to submit continuous process certificate from DIC for a further period of 45 days, i.e., upto 15-6-2007 for availing benefit of tariff during the period 1st October 2006 upto 31st March 2007. MSEDCL's Circular was issued in light of para 8 of Commission's Order dated 7-2-2007 in which Commission held as under:

"As regards the interveners, the Commission observes that if they were earlier certified as continuous process industry they will pay the base tariff of Rs.2.15 per unit (kWh) towards energy charge and ASC of 42% or 30/23% depending on whether they are on express feeder or non express, feeder located in 'Industrial & Urban Agglomerations' or 'Other Regions' respectively. If not certified earlier the interveners and/or its members may approach DCI for certification on whether it is a continuous process industry or a non-continuous process industry and submit the same to the Petitioners to avail the applicable tariff with effect from 1st October 2006. Furthermore, in the event of any grievance on account of alleged wrong categorization, the machinery to agitate such issues is provided in the Regulations made by the Commission in pursuance of subsections (5), (6) and (7) of Section 42 of the EA 2003. The intervening party and/or its members may approach the concerned consumer grievance redressal forums established by the Petitioners and file their representations. Representations may be filed with the Electricity Ombudsman, on non-redressal of grievance by the said forums".

5. The Petitioner has prayed for clarifications as under:

- i) *The Commission in its Order dated 7-2-2007 said that, "If not certified earlier the interveners and / or its members may approach DCI for certification on whether it is a continuous process industry or a non-continuous process industry and submit the same to the Petitioners to avail*



the applicable tariff w.e.f. 1st October 2006". It is to clarify that in case the continuous process certificate from DCI or DIC is submitted after 1-10-2006, the tariff applicable from 1-10-2006 shall be applied to such consumer with retrospective effect from 1-10-2006.

- ii) *It is further clarify whether the target date for submission of continuous process certificate has been approved by the Commission as 15-6-2007 and thereafter no such certificates shall have any effect.*
- iii) *In case the Commission has not approved the circular No.52 of MSEDCL, then Commission is requested to direct MSEDCL to withdraw such portion of circular which is inconsistent with Commissions order dated 7-2-2007.*

6. An admissibility hearing was held on May 21, 2008. Shri. R.B. Goenka appeared for the Petitioner. Shri. Abhijit Deshpande appeared for MSEDCL. Shri. R.B. Goenka on behalf of the Petitioner submitted that in the Commission's Order dated 7.2.2007 passed in Case No.59 of 2006, it is clarified that continuous and non-continuous categories are differentiated based on the continuous and non continuous nature of the process. The Commission clarified that the Development Commissioner of Industries or similar authorities designated by the State Government are the appropriate forum to certify whether an industry is a continuous process industry or non continuous process industry and the industry concerned would need to submit required certifications from State Industrial Development Authorities. It is submitted that the State Government by virtue of a GR authorized the District Industries Centre to issue the requisite certificate. Thereafter, one Commercial Circular No.52 issued by MSEDCL did not confirm with the said order of the Commission. In that Circular, it is said that MSEDCL will be following the provisions of Circular No. 47 only for a further period of 45 days. MSEDCL have fixed a target of 45 days within which period certificates issued shall be accepted and certificates issued after the period of 45 days will not be accepted, the same will be treated as non-continuous industry and will be charged accordingly for the period 1st October 2006 to 31st March 2007. That means that even if the certificate is submitted within 45 days, MSEDCL will give retrospective effect to the tariff applicable from 1st October, 2006. But beyond 45 days, it was said that certificates shall not be accepted. In the said order issued by the Commission, it was said that if the continuous process industry is certified by the competent authority, then it will get benefit for 1st October 2006 to 30th April, 2007. The wordings in the said order are not quite clear. It is also mentioned that due to this ambiguity, there are certain cases before the CGRF and Electricity Ombudsman which went against consumers due to the ambiguity in the wordings in the said Order dated 7.2.2007 passed in Case No.59 of 2006. In the said Order, the Commission held that if a concern was earlier certified as continuous process industry, they will pay the base tariff of Rs.2.15 paise per unit (kWH) towards energy charges and ASC 42% or 30% depending on whether they are on express feeder or non-express feeder located in industrial and urban agglomerations or other regions respectively. If not certified earlier, the interveners or its members may approach DCI for certification on whether it is a continuous process industry or non-continuous process industry and submit the same to MSEDCL to avail the applicable tariff with effect from 1st October, 2006. This created confusion to the effect that if the certificate is submitted after this date whether retrospective effect will be given from 1st October 2006. As per Circular issued by MSEDCL, it is clearly stated that retrospective effect with respect to tariff applicable



shall be given from 1st October 2006. However, in certain orders passed by the Electricity Ombudsman, it is held that the tariff will be applicable from the date certificate is given but tariff applicable shall be which was started from 1st October 2006 but no retrospective effect to be given. Therefore, the need to file the present petition seeking clarifications. Also, in case the Commission has yet not approved the said Circular No. 52 of MSEDCL, then the Commission is requested to direct MSEDCL to withdraw such portion of the circular which is inconsistent with Commission's Order dated 7.2.2007 passed in Case No.59 of 2006.

7. The Petitioner submitted that clarification is sought as to whether the tariff would be effected after the date of giving of the certificate or will such tariff have retrospective effect even prior to submission of the certificate.

8. Shri. Abhijit Deshpande on behalf of the Respondent submitted that the present petition was actually a combination of pleadings seeking clarifications, review as well as could be treated as a new petition. The Respondent objected to the vetting of its circular in this way.

9. Per contra, the Petitioner submitted that any circular which MSEDCL issues has to be necessarily as per the provisions of the Electricity Act, 2003 ("EA 2003") Regulations, thereunder or the orders issued thereunder.

10. The Respondent submitted that in the whole of the Petition nowhere it has been pointed out as to how MSEDCL is contradicting any of the directions of the Commission or any Regulations or the EA 2003. The Respondent submitted that what has been given in the circular is as to the methodology that is required to be followed by the field officers for complying with the Commission's Order. MSEDCL submitted that MSEDCL has not contradicted any of the provisions of the Commission's Order. Concedingly, the problem occurs when General Managers view particular cases differently. MSEDCL submitted that it is implementing the Commission's Order with retrospective effect inspite of Ombudsman's orders. However, in two or three cases where the Ombudsman has explicitly ruled that prospective effect needs to be given there MSEDCL may have to follow the Ombudsman's order but in general, MSEDCL's software is implementing this particular provision irrespective of the date. MSEDCL submitted that even certificates received last month have been given retrospective effect from 1st October 2006 to 31st March 2007. MSEDCL submitted that as regards the allegation that the circulars issued are contradictory to the Commission's Order, if at all, the Petitioners will have to file a full-fledged Petition pointing towards those contradictions specifically. This aspect cannot be taken up in the present proceedings. Therefore, the prayer pertaining to vetting of MSEDCL's circular should be dismissed outright.

11. Having heard the parties, the Commission observes that largely, MSEDCL has already clarified the issues that were being pointed out by the Petitioner. The Commission cannot however issue clarifications with respect to isolated cases where the consumers have not received the desired relief due to orders passed by any other authority. It should be noted that the tariffs determined in the Tariff Order dated October 20, 2006 were made applicable till April 30, 2007, and MSEDCL should



ensure that the tariffs are charged accordingly upto April 30, 2007, as stated by MSEDCL.

With the above observations the present petition stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC