

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
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Case No. 60 of 2008

In the matter of
Petition filed by Shri. Haleem Mohd. Hanif Khan seeking review of Order dated
20.6.2008 in Case No. 72 of 2007.

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

Haleem Mohd. Hanif Khan
Power-loom Parivar Association
Bhiwandi, Thane.

.... Petitioner

Versus

1. Maharashtra State Electricity Distribution Co. Ltd.
Plot No. G-9, "Prakashgad"
Bandra (East),
Mumbai – 400 051

2. Government of Maharashtra
Through Energy Secretary
I.E. & L Dept., (Energy-3)
Mantralaya, Mumbai 400 032

.... Respondents

ORDER

Dated: September 29, 2008

Shri. Haleem Mohd. Hanif Khan filed a petition on 31.7.2008 seeking a review of the Commission's Tariff Order dated 20.6.2008 passed in Case No. 72 of 2007 to the extent of LT-V Tariff – Power-loom, i.e., to the extent of its applicability to the Power-loom consumers and to the extent of preparatory units to the Machinery/Activities of Power-looms. The present review petition has been filed under the provisions of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 against the impugned order dated 20.6.2008.



2. The Petitioner has submitted that he is the General Secretary, Minorities Department N.C.P. & President of Power-loom Parivar Association (Reg.) & representing large number of people/members of the association. The Petitioner has submitted that he is also National General Secretary of Minority Department, Nationalist Congress Party, who is representing himself on behalf of the public at large those who have a grievance from the decision on Aggregate Revenue Requirement (ARR) & Tariff for Financial Year (FY) 2008-09 submitted by Maharashtra State Electricity Distribution Company Limited (MSEDCL).

3. The Petitioner has submitted that there are certain latches and lacunae in the proposal submitted by MSEDCL to the Commission for consideration and determination of ARR.

4. The Petitioner submitted that the impugned order dated 20.6.2008 creates imparity and discrimination amongst the consumers of same category and has caused grave injustice to the consumers whose connected load is more than 20 kW/27 HP. The Petitioner submitted that the impugned order needs reconsideration as per the policy of the State Government to provide electricity to the power-looms with concessional rates as per the Government decision dated 26th February 2008.

5. The Petitioner also submitted that as per the proposal submitted by MSEDCL, two new categories have been introduced i.e., power-looms and flour mills separated from LT-V industry. The Petitioner has submitted that it is unnecessarily proposed that any industry having 1) Single Yarn Sizing, 2) Twist Sizing, 3) Wrapping, 4) Pirn Winding, 5) Twisting, 6) Yarn Dying, 7) Humidification Plant and 8) Dust Separator etc., is a weaving preparatory unit and can be considered as eligible for power-loom tariff provided the said industry does also have weaving machinery (power-looms). In other words, an industry having any or all of the abovementioned weaving preparatory machinery and not having power-looms in the same premises under one roof, then such industry shall not be eligible for power-loom tariff. The Petitioner submitted that only Wrapping & Pirn winding are required in preparatory machinery for the power-looms therefore other machineries are not required to be included in the said category. It is the Petitioner's submission that except the abovementioned two preparatory machineries, other preparatory machineries should be excluded from the said category as the same are not preparatory machineries for Power-looms.

6. The Petitioner submitted that the difference of tariff applied to 20 kW power-looms and above 20 kW power-looms is harsh and unreasonable towards the consumer having more than 20 kW power-looms. It is the submission of the Petitioner that for the consumers having more than 20 kW power-looms, there is marginal difference to the rates of the products of below 20 kW power-looms and above 20 kW power-looms causing great strain if the present proposal is continued. It is submitted by the Petitioner that the quality of the products below 20 kW power-looms and above 20 kW power-looms are same, therefore there is huge burden upon the power-looms above 20 kW for



selling their products in the market by computing the low cost products of below 20 kW powerlooms, which are of same qualities. The Petitioner submitted that there should not be difference in tariff below 20 kW and above 20 kW power-looms. Therefore, the Petitioner seeks review of the impugned order in the interest of justice, equity and good conscience.

7. The Petitioner has submitted that power-loom business is a cottage industry providing livelihood to mainly the unskilled and semi-skilled workers especially in the rural area. The Petitioner has submitted that power-loom consumers are divided into two categories as earlier mentioned hereinabove viz., the consumer having connected load of less than 20 kW and more than 20 kW. The Petitioner has submitted that generally, there are more than one power-looms units in one shed where one single connection is provided for the power-looms as per the provisions/resolutions of State Government and there cannot be one single electricity connection provided to single power-loom, therefore certainly there are more power-looms units in one sheds (Group Work shed System) with one single electricity connection. The Petitioner has submitted that because of such situation that more than one power-loom units and their owners working under one shed, certainly there will be consumption of more electricity than 20 kW/27 HP. The Petitioner has submitted that it is futile to bifurcate the categories of power-loom for tariff below 20 kW consumption and above 20 kW consumption of electricity, therefore any person having two or more such units in one sheds automatically falls in the upper category. The Petitioner has submitted that however, all consumers (having sanctioned load of less than 20 kW or more than 20 kW) manufacture similar product, which are sold in same common market without any brand name. The Petitioner has submitted that thus, all the consumers are at par as far as availability of market, rate structure, competition etc., are concerned. However, the margin of profit varies due to the difference in cost of production. The rate for consumers having sanctioned load of 20 kW is higher than Re.1/- per unit, the production cost increase by 32-35 paise per meter. This difference in cost of production creates unhealthy competition between the same class of consumers, which thereby provokes these consumers to find loopholes. Therefore, all LT power-loom consumers need equal treatment irrespective of their sanctioned load, as the consumers having sanctioned load of more than 20 kW do not enjoy any upper hand or added benefit over the consumers having sanctioned load of less than 20 kW. The Petitioner has submitted that the sub-classification be removed and uniform tariff be fixed for all LT power-loom consumers irrespective of their sanctioned load.

8. The Petitioner has prayed as under:

- a) *Review and modify the tariff order dated 20.6.2008 to the extent of LT-V tariff and further to the extent of its applicability to power-loom consumers;*
- b) *It is to be ordered to State Government of Maharashtra that separate uniform tariff of 300 paise/KwH without any classification based on either consumption level or connected load of less than 20 kW and more than 20 KW be framed and inserted into LT-V tariff creating a sub-category for power-loom consumers in ARR and tariff for Financial Year 2008-09;*



- c) *The machineries/activities such as Pirn Winding and Warping machine only is to be declared as weaving preparatory unit excluding other activities and machineries mentioned in the proposal can be considered as eligible for power-loom tariff;*
- d) *Any other just, fit and equitable relief be granted for the effective adjudication of the subject matter involved in this petition for its implementation.*

9. A hearing was held on 11.9.2008. Shri. S.M. Suryawanshi, Advocate appeared for the Petitioner. Shri. Abhishek Khare, Advocate appearing for MSEDCL objected on the maintainability of the Petition on the ground that the same is an appeal in the guise of a review.

10. Having heard the parties and after considering the material placed on record, the Commission is of the view that the present petition is not maintainable and hence is liable to be rejected because the Petitioner has not been able to point out as to how his Petition is maintainable as a review petition. No mistake or error has been pointed out in the impugned order by the Petitioner. His case is not even that upon discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the impugned order was passed. No material has been placed by the Petitioner to show that the Commission would have decided the impugned order in a different manner had such material been considered by the Commission. The Petitioner's case is that he is aggrieved by the impugned order of the Commission. The Supreme Court in *M/s. Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh* represented by the Deputy Commissioner of Commercial Taxes, Anantapur, [AIR 1964 SC 1372] held as follows:

"There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

In the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [AIR 1979 Supreme Court 1047] it was observed that:

".....The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be



exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of error committed by the Subordinate Court."

It is settled law that an appeal cannot be disguised as a review. It is also settled law that if at all there is any mistake or error such a mistake or error should be glaring and should be able to be made out at first reading. It should be patent and manifest. If, however, any mistake or error is required to be pointed out with prolonged and complicated arguments and contentions with two views possible on it, then such mistake or error cannot be corrected in review proceedings.

11. If, as contended by the Petitioner, there are certain latches and lacunae in the proposal submitted by MSEDCL to the Commission for consideration and determination of ARR, the Petitioner should have taken part in the public hearings held in this regard to point the same out.

12. The Petitioner has contended that the impugned order needs reconsideration as per the policy of the State Government to provide electricity to the power-looms with concessional rates as per the Government decision dated 26th February 2008. The Commission determines tariff under Section 86 of the EA 2003 read with Sections 61 and 62 of the EA 2003. After such tariff determination by the Commission, it is within the GoM's jurisdiction to provide subsidy to any consumer category, subject to the provisions of Section 65 of the EA 2003.

In view of the above, the Petition filed in Case No. 60 of 2008 is hereby dismissed as not maintainable.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC