

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. 62 of 2008

In the matter of
**Petition filed by Maharashtra Rajya Veej Grahak Sanghatna seeking review of
order dated 20.6.2008 in Case No. 72 of 2007.**

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

Maharashtra Rajya Veej Grahak Sanghatna
(Through Shri. Pratap Ganpatrao Hogade)
12/388, M. Phule Road,
Ichalkaranji 416 115,
District Kolhapur

... Petitioner

Vs

1. Maharashtra State Electricity Distribution
Company Limited
Prakashgad, 5th Floor, Bandra (East)
Mumbai – 400 051.

2. State of Maharashtra, Energy Department
(Through Principal Secretary, Energy
Department, State of Maharashtra)
Mantralaya, 4th Floor, Mumbai – 400 032.

... Respondents

ORDER

Dated: July 13, 2009

Maharashtra Rajya Veej Grahak Sanghatna filed a Petition on 5.8.2008 seeking a review of Commission's Order dated 20.6.2008 (Case No. 72 of 2007) wherein the Annual Performance Review for FY 2007 -08, truing up of revenue and



expenses for FY 2006-07 and tariff for FY 2008-09, was determined for Maharashtra State Electricity Distribution Company Limited (“MSEDCL”). The Petitioner has stated that the said impugned order has categorised power loom LT–V industrial consumers in two groups namely, upto 20 kW and above 20 kW and has laid down separate tariff rates for each of them namely, 300 paise/unit and 450 paise/unit respectively. The Petitioner has stated that there is an error apparent on the face of the record of the impugned order for the reason that the impugned order expressly states that agriculture and power looms can be separate categories. At paragraph no. 31 at page no. 23, the impugned order states that:

“..There will of course, be some differences, on account of certain consumer categories being present only in certain licence areas, such as agricultural category, power looms, etc., which will exist only in certain licence areas.”

This view has been repeated in the rulings at page no. 74 and in tariff philosophy at page no. 199. Though, the Commission has passed this observation but has not created a separate category. This according to the Petitioner is an error apparent on the face of the record. Review has been sought for creation of a separate category for power looms as a low tension user. The Petitioner has also relied upon paragraph 1.2 of the National Electricity Policy notified by the Central Government which states as under:

“1.2 Electricity is an essential requirement for all facets of our life. It has been recognized as a basic human need. It is a critical infrastructure on which the socio-economic development of the country depends. Supply of electricity at reasonable rate to rural India is essential for its overall development. Equally important is availability of reliable and quality power at competitive rates to Indian industry to make it globally competitive and to enable it to exploit the tremendous potential of employment generation.”

For seeking a review of the impugned order, the Petitioner has relied upon paragraph 8.3.3 of the Tariff Policy that states as under:

“Tariff for agricultural use may be set at different levels for different parts of a state depending on the condition of the ground water table to prevent excessive depletion of ground water.”

Therefore, according to the Petitioner, in the agricultural sector, one State may have different tariff rates.

2. The prayers made in the Petition are as follows:

- (i) A separate category for the Power Looms, who are presently categorized under LT(V) industrial;



- (ii) A uniform fixed charges of Rs. 150 per month and tariff of Rs. 300 per unit should be fixed for all the low voltage consumers falling under the category of power loom;
- (iii) The aforesaid tariff category and the charges should be implemented from 1.6.2008;
- (iv) The Commission's decision to create a separate category for low voltage power loom consumers, and the uniformity of charges for all the consumers falling under the said category, may be continued in future also;
- (v) Under Regulation 3.4.3 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, the utility may be accordingly directed to be given separate supply for each separate establishment.

3. The Petitioner states that the power loom industry finds an important place in the State of Maharashtra. Therefore, after considering the employment capacity of this industry, etc., the State Government has from 1994 provided various concessions to this industry. The concessional tariff enforced by the State Government has been uniform. The last tariff enforced by the State Government upto December 2007 was 160 paise/unit for all power loom industry consumers. Therefore, all power loom industry consumers whether low tension or high tension were paying their electricity bills at a uniform rate. However, the State has on 26.2.2008 with effect from 1.1.2008 accepted the tariff rate determined by the Commission. Accordingly there is a difference in the billing rate of the consumers using upto 20 kW and more than 20 kW of electricity, resulting in difference in manufacturing. This has resulted in either closure of power looms using additional load of over 20 kW or have placed such power looms in financial difficulties. Keeping in mind the importance of power looms in the State's industrial progress, MSEDCL had in its Petition requested for a separate category to be created in respect of power looms. During the hearing before the Commission, all power loom organizations and bodies had supported this request of MSEDCL and had prayed for a uniform tariff rate. However, the request of the various power loom consumers was neglected and was not dealt with completely. Therefore for the benefit of the industrial consumers, the State and its progress, the Petitioner on behalf of the power loom consumers utilizing over 20 kW of electricity have filed this review petition.

4. In support of its review petition, the Petitioner has pointed out employment capacity of the industry of the power looms; financial position of the power looms; revenue to the Government from textile, excise duty on artificially produced threads, on fibre and filament yarn, excise, VAT, octroi, service tax, professional tax, etc. The Petitioner has stated that keeping in mind the employment generated by textile industry, its export capacity, receivable revenue, etc., the State and Central Government have provided a number of concessions to this industry. One of such concession given by the State Government is that of electricity. This concession was granted from time to



time by the State Government so as to achieve the desired objectives from this industry in the domestic and international markets. It is due to this concession that the power loom industry in the State has progressed consistently. It has been stated that the Commission had considering the special nature of this industry created a separate category for this industry and had applied a separate rate thereto. Earlier a flat rate of Rs.300 per power loom was applied in cases where there was no meter, which was later changed to Rs. 450. Further, as per the Order of December 2000, even in cases where there was a meter, a concessional rate was applicable upto 1000 units. The Commission has made two categories, which are charged at 300 paise/unit and 450 paise/unit. Further, 3 to 3.5 meter of cloth is produced with 1 unit of electricity. Therefore due to the difference of Rs.1.5, the production cost of a consumer of over 20 kW is increased by 50 paise per meter. Apart from this, the consumer has to pay electricity duty, fuel surcharge, etc. With an increase of 50 paise to 55 paise per meter, no power loom vendor would be able to sell his produce. Least loss, 24 hours production and minimum expenditure are the foundation of this industry. Even considering the concessions granted by the State Government, there is a difference of 30 to 45 paise per meter. Since a consumer over 20 kW is not able to sell his produce with this increased production cost, his business is financially impaired. Uptill now the State Government had sanctioned a uniform tariff rate to the power loom industry and therefore they were not faced with this situation. However, now the State has on 26.2.2008 with effect from 1.1.2008 accepted the tariff rate determined by the Commission. Therefore in the last 5 years the result of this rate differentiation is becoming evident. The power looms consuming over 20 kW are faced with financial problems and some of them have also closed down their businesses.

5. It has been stated by the Petitioner that as per the tariff approved by the Commission, the difference comes to 150 paise per unit. If power loom is treated as a separate category and a uniform rate is made applicable, the loss of revenue is only Rs.150 crore. However, all power looms consuming over 20 kW of electricity will be able to carry on their business conveniently. The rate for power looms consuming upto 20 kW is 300 paise/unit. This rate is less than the cost of service ("COS"). However, the rate for power looms consuming over 20 kW is 450 paise/unit. The Commission has estimated the CoS at 362 paise/unit for this year, this rate therefore is 88 paise/unit higher than the CoS. Power looms were always granted concessions by the State Government, therefore charging a subsidized industry with a rate higher than the CoS is against logic. Hence, the Commission should consider that the rate chargeable to the consumer should be less than the cost of supply. Similarly, the rate applicable for low tension consumer of over 20 kW is 450 paise/unit and the rate applicable for high tension consumer is 395 paise/unit or 430 paise/unit, on the face of it appears illogical. Therefore the most appropriate rate for consumers over 20 KW is 300 paise/unit. The Petitioner has pointed out that rates in other States are less or subsidized.



6. A hearing was held on 17.9.2008. Shri. Pratap Hogade appearing for the Petitioner reiterated the submissions made in the Petition. Shri. Abhisekh Khare appearing for MSEDCL objected to the maintainability of the Petition on the ground that the same amounted to an appeal and not a review petition. Shri. Shantunu Dixit appeared for Prayas, a consumer representative organization authorised under Section 94(3) of the EA 2003 on a standing basis to represent the interests of consumers in the proceedings before the Commission. Shri. Shantunu Dixit submitted that MSEDCL should be directed to provide separate connection for separate establishments.

7. Having heard the parties and after considering the materials placed on record, the Commission is of the view that it is well settled that review proceedings are not by way of an appeal and have to be strictly confined within the ambit of review the requirements of which are specified in Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004. Regulation 85(a) permits review only on three grounds, viz., (i) discovery of new and important matters or evidence, or (ii) mistake or error on the face of the record, or (iii) any other sufficient reasons. Review cannot be mistaken for an appeal as the scope of appeal is different from the scope of review, which is very much limited. It has been held by various courts from time and again that a “review” is by no means an “appeal” in disguise. The present petition, when tested against the well settled law on review proceedings, cannot be admitted because it is not maintainable on account of the following reasons-

(i) There is no bearing of the aforesaid observation of the Commission at paragraph 31 at page 23 in the impugned order because the Commission has taken a conscious decision which is made clear in the impugned order at places more than one as follows:-

“43. MSEDCL had proposed to introduce two new sub-categories within LT V industrial category, viz., (a) Power looms, and (b) Flour mills below 10 HP sanctioned load, and proposed a lower tariff for these two new sub-categories. The Commission has not created these two sub-categories, and has retained them under the LT V industrial category. However, the Commission has ensured that there is no tariff increase for the sub-category 0 to 20 kW, thereby protecting the smaller consumers from a tariff shock.”

The argument that the State Government which was earlier giving subsidy to ensure that the tariffs for the power loom category was same across the category, has also started giving subsidy in accordance with the tariff sub-categories created by the Commission and hence, the Commission should review its order and create a separate category for power looms is not tenable.



- (ii) It is pertinent to refer to Section 65 of the EA 2003, which states as under:

“ Provision of subsidy by State Government:

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, in advance and in such manner as may be specified, 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 the State Commission shall be applicable from the date of issue of orders by the Commission in this regard.”

The EA 2003 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.

The Commission does not find any error in the impugned order on account of the above.

(iii) It is well settled that an error must be apparent on the face of the record for allowing a review. The error must be glaring. It must strike at the face by a mere first look. If complicated questions of fact and law are to be dealt with then a review is not permissible, but an appeal may certainly lie. Also, when there are two possible opinions on a matter, no review is permissible. In the present case, the Petitioner has pointed out diverse perspectives such as (i) Employment capacity of the industry; (ii) Financial position of the Industry; (iii) Revenue to the Government; (iv) Concessions by the State and Central Government; (v) Industrial market; (vi) Result of tariff differentiation; (vii) Difference in revenue of MSEDCL; (viii) Cross subsidy Rates in other States, etc. These, in the view of the Commission, are not allowable grounds to seek review.



8. None of the three grounds, viz., (i) discovery of new and important matters or evidence, or (ii) mistake or error on the face of the record, or (iii) any other sufficient reasons, have been able to be pointed out by the Petitioner to seek review. Accordingly, the review petition is liable to be dismissed and is hereby dismissed as not maintainable. Since the review petition itself is not maintainable, the prayer seeking directions to MSEDCL to give separate supply for each separate establishment as well as other prayers related to LT power loom tariff, cannot be granted in the present proceedings.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC