

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 40 of 2006

In the matter of
Petition of Marathwada Industries Association seeking revision in energy bills
as per HTP-II tariff as per Commission's Orders dated 28th April 2000
and 5th May 2000 and consequent refund of excess amounts
collected by MSEB under HTP-I tariff..

Shri A. Velayutham, Member

Shri S. B. Kulkarni, Member

ORDER

Dated: 21st December, 2006

Marathwada Industries Association (MIA), the Petitioners herein, had filed Interlocutory Application Nos. 43 and 150 of 2006 before the Appellate Tribunal for Electricity (ATE). Essentially, the contention taken before the Hon'ble Appellate Tribunal was that this Commission has not disposed off a Petition filed by the Petitioners on 13th September, 2001 wherein the Petitioners had complained that Maharashtra State Electricity Board (predecessor of Maharashtra State Electricity Distribution Company Limited "MSEDCL") had wrongfully deviated from an Order dated 28th April 2000 passed by the Commission in Case No. 1 of 1999, by charging HTP-I tariff to industries outside the Bombay Metropolitan Region/ Pune Metropolitan Region ("BMR/PMR"). In the aforesaid Petition filed before the Commission on 13th September 2001, the Petitioners contended that, although the tariff that was applicable to the members of the Petitioners situated outside BMR/PMR, as per the aforesaid Order of the Commission, was to be HTP-II, MSEB, since the month of May 2000 issued bills as per HTP-I tariff instead of HTP-II. It had been contended that pursuant to the High Tension Tariff description in the Tariff Booklet of MSEB, HTP-I tariff were charged to HT consumers and HT industrial consumers situated outside BMR/PMR region but situated in Thane, Pune and Raigad Districts, Nasik and its urban agglomerations including the industrial areas of Satpur and Ambad industrial estates, Aurangabad and its urban agglomerations including the industrial estates of Chikalthana, Waluj and Chitegaon whose contract demand is above 500 KVA. It had been contended that the above is a deviation from the aforesaid Order of the Commission and is not made in uniform pattern but a sub-category is carved out as HT consumers having contract demand below 500 KVA and above 500 KVA, thus making out a case of discrimination amongst consumers. It had, thus, been contended that, all energy bills that have been issued since the month of May 2000 to the members of the MIA situated outside BMR/PMR and whose contract demand is above



500 KVA, are wrong and excessive and thus liable to be refunded. It had also been contended that no opportunity was given to the consumers who were affected by the change in the applicability of tariff and thus, the charging by MSEB of such tariff in deviation of the aforesaid Orders passed by the Commission is against the principles of natural justice. It is the case of the Petitioners that it is only the Commission, that has the authority under law to determine, fix and amend tariff after following the procedure prescribed under law, and such powers could not have been validly exercised by MSEB in unilaterally deviating from the aforesaid Order dated 28th April 2000.

2. The Petitioners, before approaching the Appellate Tribunal, had preferred a Writ Petition before the Hon'ble High Court of Judicature at Bombay (Bench at Aurangabad). In view of the establishment of the ATE under Section 110 of the Electricity Act, 2003 ("EA 2003") and prayers made by the Petitioners, the Hon'ble High Court had disposed off the Writ Petition as withdrawn, with liberty being given to the Petitioners to approach the Appellate Tribunal. The Hon'ble Appellate Tribunal vide its order dated 1st November, 2006 in IA Nos. 43 and 150 of 2006, without expressing any opinion on merits, directed this Commission to consider the Petition filed before the Commission which had not been disposed off, and pass appropriate orders according to law, with liberty being given to the Petitioners to make any additional representation. Subsequent thereto, the Petitioners herein filed their additional representation on 1st November 2006.

3. A hearing was held in the matter on 30th November 2006. Although invited, no one appeared for the authorised consumer representatives. Shri S.C Karandikar Counsel appeared for the Petitioner. Smt. Deepa Chawan, Counsel appeared on behalf of MSEDCL, the Respondents herein. As raised in the Petition filed on 13th September 2001, and in the additional representation vide Petition filed on 1st November, 2006 as also during the aforesaid hearing, the contentions of the Petitioners have been that as per the 'Summary of HT Tariff for the year 2000-01' contained in operative tariff Orders dated 28th April, 2000 and in the detailed tariff Order dated 5th May 2000 passed by the Commission, HTP-I tariff is applicable to consumers situated in the BMR/ PMR and HTP-II tariff is applicable to consumers other than those situated in BMR/ PMR. MSEB/ MSEDCL which is duty bound to implement the tariff Orders passed by the Commission cannot apply HTP-I tariff to consumers situated outside BMR/ PMR. However, MSEB/ MSEDCL have wrongfully applied HTP-I tariff to consumers situated outside BMR/ PMR. Thus, the Respondents are liable to be penalised under Regulation 84 of the MERC (Conduct of Business) Regulations, 1999, and under Section 45 of the Electricity Regulatory Commissions Act, 1998 ("ERC Act"), for charging a tariff different from that approved by the Commission. The Petitioners have pointed out that the Commission may exercise the aforesaid statutory powers under Section 142 of the EA 2003, as the ERC Act, 1998 stands repealed by the EA, 2003. Shri. S. C. Karandikar, Counsel, contended on behalf of the Petitioners that the communication under letter dated 8th August, 2001 by the Secretary of the Commission was erroneous inasmuch as the grievance of the Petitioners was not regarding the definition or classification of HTP-I and HTP-II tariff but related to the wrong implementation of the Orders dated 28th April, 2000 and 5th May, 2000 passed by the Commission by bringing industrial consumers situated outside BMR/PMR under the scope of HTP-I tariff.



4. Rebutting the contentions of the Petitioners, Counsel for the Respondent submitted that the contentions raised by the Petitioners were without basis. She submitted that the categorization of consumers for the purposes of tariff had been done by MSEB much prior to the constitution of this Commission, as such categorization had been done pursuant to Section 49 of the Electricity (Supply) Act, 1948 (“ES Act, 1948”). MSEB’s tariff was approved by the State Government and the tariff (prior to the first tariff approved by the Commission) was published in the Government Gazette on 30th April, 1990. Under the said tariff, the Petitioners were categorised under HTP-I category. Further, the Notification dated 30th April, 1990 categorised High Tension consumers as HTP-I and HTP-II. HTP-I tariff was applicable to all HT Industries and other HT industrial consumers situated in Bombay Metropolitan Region and Pune Metropolitan Region, as defined by the State Government, and also applicable to all High Tension industrial consumers situated outside Bombay Metropolitan and Pune Metropolitan Region but situated in Thane, Pune, Raigad Districts, Nasik and its Urban agglomerations including the industrial areas of Satpur and Ambad, Aurangabad and its Urban agglomerations including industrial areas of Chikalhana, Waluj and Chitegaon whose contract demand is above 500 KVA. Since the year 1990, the members of the Petitioner Association were categorised under HTP-I category and were billed accordingly. The members of the Petitioner continued to be billed under the said HTP-I category from 1990 till November, 2003 when pursuant to tariff Order dated 3rd December, 2003, the Commission re-categorised the Petitioner under HTP-II category. In its Order dated 1st December, 2003 in Case No. 2 of 2003, the Commission observed that:

“The Commission has reclassified the HTP-I category to include only those HT industrial and other HT consumers situated in the Mumbai Metropolitan Region (MMR) and Pune Metropolitan Region (PMR), as defined by the State Government. The balance HT industrial and other HT consumers would be classified under HTP-II category”.

It has been submitted by the Respondents that since 1990, MSEB continued with the same categorisation of consumers and the same was included in MSEB’s tariff proposal of 2000. It has been contended that, thus, MSEB has never by their own categorised or re- categorised any consumer including the Petitioner and the allegation to the contrary taken by the Petitioners is false and baseless. Respondents have contended that the Petitioners have suppressed material facts and have shown complete lack of diligence in pursuing these issues before various Forums. It has also been contended that this Commission has not made any modification pertaining to the categorisation of consumers, as it stood earlier, in the tariff Order dated 5th May, 2000. The Tariff Booklet was published by the MSEB and the members of the Petitioner Association were charged on the basis of the said Tariff Booklet. However, pursuant to the re-categorisation of HTP-I and HTP-II consumers in the Order dated 1st December 2003, the members of the Petitioner Association fall under HTP-II category and have been charged accordingly. It has further been contended that the restricted and literal interpretation of the abbreviations “BMR” and “PMR” taken by the Petitioners for challenging the bills issued to its members situated in Aurangabad, is erroneous. In view of the above, it has been further contended that the reply of the Commission under its aforesaid letter dated 8th August, 2001 was a correct conclusion on the subject. The Petitioners should have considered the clear logic in the said letter and should have been diligent enough not to

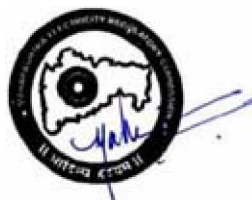


initiate multiple proceedings on the issue. Under the said letter dated 8th August 2001, the Petitioners were informed that MSEB has not flouted any Order of the Commission, as alleged, and further guided the Petitioners in all fairness. The Respondents have contended that the present case is frivolous and the Commission must levy costs on the Petitioners on the said count.

5. Per contra, it has been contended by the Petitioners that the Commission's Order dated 28th April, 2000 having come into force, the tariff fixed therein should have been considered as law, and the tariff fixed earlier as also the categorization of consumers under the said Notification dated 30th April, 1990 would have no validity. Contravention of law would be on account of deviation from the Order of the Commission and not from the said Notification. The Tariff Booklet of MSEB should be considered unlawful as it contravenes the aforesaid Orders of the Commission. Further, expansion in the applicability of HTP-I tariff was not a subject matter under MSEB's tariff proposal while the Commission passed its Orders dated 28th April, 2000 and 5th May, 2000. The Respondents have contended that as far as tariff proposal for the year 2000 was concerned, MSEB had not proposed any re-categorisation for HTP-I tariff. However, in the year 2003, the Commission had approved re-categorisation on MSEB's proposal.

6. Having heard the parties at length and after considering the materials placed on record, the Commission is of the view that the Petition and contentions raised by the Petitioners therein cannot be sustained for reasons provided hereafter. The Commission came into existence on 12th August, 1999 under Section 17 of the ERC Act, 1998. After having come into existence, and being the sole authority empowered under Section 29 of the ERC Act, 1998 to determine tariff for supply of electricity in the State of Maharashtra, the Commission undertook a regulatory process for determining/ revising MSEB's tariffs for the first time, which was numbered as Case No. 1 of 1999. Besides the operative tariff Order dated 28th April, 2000 and detailed tariff Order dated 5th May 2000, certain Clarificatory Orders were also issued in the said Case No. 1 of 1999. In the said Orders dated 28th April, 2000 and 5th May 2000, although, the tariffs applicable to high tension consumers were revised, the scope and ambit of BMR/ PMR was not modified by the Commission in its Order dated 5th May, 2000. Para 46 states that *"the Commission would like to state here that there is no change in the definition of categories, unless explicitly mentioned in this tariff Order"*. The definition of categories has been elaborated in the tariff schedule while the tariff Order indicates the name of categories and applicable tariff. Therefore, the definition of BMR/ PMR as per MSEB's Tariff Booklet effective from the billing month of May 1990 and formulated by MSEB under Section 49 of the Electricity Supply Act, 1948, continued to remain as it is as part of the Orders dated 28th April, 2000 and 5th May, 2000. HTP-I tariff under the aforesaid Orders dated 28th April, 2000 and 5th May, 2000 was thus applicable to High Tension consumers in BMR/ PMR as defined in the MSEB Tariff Booklet of 1990 which provides as follows:

"This tariff is applicable for all H.T. industries and other H.T. consumers in Bombay Metropolitan Region and Pune Metropolitan Region as defined by the State Government. This tariff will also be applicable to other High Tension consumers and High Tension Industrial consumers situated outside Bombay Metropolitan Region and Pune Metropolitan Regions but situated in Thane, Pune and Raigad Districts, Nasik and



its Urban agglomerations including the industrial areas of Satpur and Ambad Industrial Estate, Aurangabad and its Urban agglomerations including the industrial estates of Chikalthana and Waluj, whose contract demand is above 500 KVA or who even once record a maximum demand of more than 500 KVA.”

This is as per the MSEB Tariff Booklet of 1990 and the same had not been modified either by the State Government till the ERC Act, 1998 came into force nor by the Commission after the enactment of the ERC Act, 1998 till the year 2003.

7. In view of the above, the Commission dismisses the Petition filed on 13th September, 2001 as well as additional representation under Petition filed on 1st November, 2006.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(Malini Shankar)
Secretary, MERC