

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 9 of 2012

In the matter of
Infrastructure and other Development activities in the erstwhile Mula Pravara Area

Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member

1. The President,
Jagran Manch, Shrirampur

2. Managing Director,
Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL),
Prakashgad, Bandra (East),
Mumbai 400 051

.....Applicants

Vs.

Mula Pravara Electric Co operative Society Ltd. (MPECS)
Shrirampur

.... Respondent

Present during the hearings

For the Applicant (Jagran Manch): Shri.Bhanudas Murkute (President)

For the Applicant (MSEDCL): Mrs. Deepa Chawan (Advocate)
Shri C.A. Gadre, GM (Comm) (Representative)
Shri S.S. Dande CE (Comm) (Representative)

For the Respondent (MPECS) Shri Shaunak Thacker (Advocate)
Shri Bhavesh Panjuani (Advocate)

ORDER

Date: 15 June, 2012

The Commission received a letter bearing Ref No. CE/MPECSL/38331 dated December 29, 2011 from the Managing Director, Maharashtra State Electricity Distribution Co Ltd. and a letter from Jagran Manch, Shrirampur dated January 12, 2012 in the matter of Infrastructure and other development activities in the area of supply served by the Respondent. These letters have been written in the backdrop of the Judgment dated December 16, 2011 delivered by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 39 of 2011 setting aside this Commission's Order dated 27th January, 2011 in Case No.85 and 87 of 2010 granting license to MSEDCL and rejecting grant of license to the Respondent. The Hon'ble Tribunal has directed that the decisions regarding of grant of distribution license in the 183 villages spread over an area of 1880 sq. kms. in 5 talukas of Shrirampur, Rahuri, Nevasa, Sangamner and Rahata taluka of Ahmednagar district (area of supply of MPECS), be taken afresh by this Commission.

2. Relevant contents of the letter dated December 29, 2011 are as under:

*“Pursuant to the APTEL order, MSEDCL on its part **will be stopping all the work on the infrastructure and other developmental activities with immediate effect, till such time MERC guides us on this issue.** This is being done to avoid any serious audit objections that may arise if public money was spent in the backdrop of Regulatory uncertainty. It is also submitted that MSEDCL would be carrying out only bare minimum maintenance and operations work so as to avoid hardships to the consumers in the erstwhile Mula Pravara area and to continue the supply of electricity to them.”*
(Emphasis added)

3. In the said letter, it has also been submitted that in view of the completely deteriorated network in the area of supply served by the Respondent, major infrastructure work is under progress including Gaothan Feeder Separation System (GFSS) with a sanctioned amount of Rs. 71 Crore which was approved by the Commission. All this work has been stopped by MSEDCL, pending receipt of guidance/decision from the Commission.

4. In the aforesaid letter dated December 29, 2011, Applicant No. 2 has furthermore stated that till regulatory uncertainty is cleared by the Commission, MSEDCL is constrained to stop release of new connections where infrastructure is required to be created in the area of supply served by Mula Pravara.

5. Applicant No. 2 has also requested the Commission in the aforesaid letter to guide MSEDCL about the future course of action on the above issues. Further, it submitted that till such time a decision of the Commission is rendered in the matter of grant of distribution license to either MSEDCL or the Respondent, MSEDCL will not incur any major expenditure in order to avoid serious audit objections.

6. The President, Jagran Manch, Shirampur, submitted an application dated January 12, 2012 to the Commission. The Applicant submitted as under:

- a) After the Commission's Order dated January 27, 2011 in Case No. 85 of 2010 and 87 of 2010, MSEDCL started its distribution work since February 1, 2011 within the territorial jurisdiction of Mula Pravara Electric Co-operative Society Ltd. (MPECS).
- b) However, the Hon'ble Tribunal set aside the Order dated January 27, 2011 in Case No. 85 of 2010 and 87 of 2010 passed by the Commission and remanded back the matter to the Commission with direction to reconsider the application for grant of license to MPECS .
- c) The Applicant further submitted that MSEDCL has started the development work of the value approximately of Rs. 87 Crore including establishment of independent Feeders, change in Transformers, new electricity connections and other modified distribution works. According to the newspapers like Pudhari, Sakal and Loksatta, it was known that most of the work is in progress and completed.
- d) However, MSEDCL has stopped all the above works after the issuance of the judgement dated December 16, 2011 by the Hon'ble Appellate Tribunal in Appeal No. 39 of 2011.

7. Therefore, in view of the above issues, the Applicant No. 2 requested the Commission to interfere in the matter and give directions / orders to MSEDCL for completion of the pending development works as well as new electricity connections and avoid the inconvenience of near about one lakh sixty thousand consumers in the territorial jurisdiction of MPECS.

8. Since the issues raised by the Applicants were of crucial importance to consumers and continuance of supply of electricity in the 183 villages spread over an area of 1880 sq. kms. in 5 talukas of Shrirampur, Rahuri, Nevasa, Sangamner and Rahata taluka of Ahmednagar district (area of supply of MPECS), pending the grant of licence to MSEDCL and / or the Respondent, the Commission vide Notice dated January 25, 2012, scheduled a hearing in the matter, on January 31, 2012 in the presence of Authorised Consumer Representatives under Section 94(3) of the Electricity Act, 2003 (hereafter referred as EA 2003).

9. During the hearing, Shri. C.A. Gadre, G.M. (Comm) and Shri. S.S. Dande C.E. (Comm) were present on behalf of MSEDCL, whereas Advocate Shaunak J. Thacker was present on behalf of MPECS. No representative appeared from Jagran Manch. Since the parties present for the hearing submitted that they haven't received the copies of the letter from Jagran Manch, the Commission adjourned the matter to February 24, 2012. In the meanwhile, the Commission directed the parties to file their replies on affidavit, if any.

10. Meanwhile, Jagran Manch submitted an affidavit dated February 21, 2012 to the Commission. The submissions are as below:

- a) Jagran Manch is a registered Social Organisation in Ahmednagar.
- b) The Applicant submitted that the Hon'ble Tribunal vide its Judgment dated December 16, 2011 has remitted the matter to the Commission for consideration afresh within three months. However, it has mentioned in its Judgment that the existing arrangement is to be continued.
- c) MSEDCL has started distribution of electricity from February 1, 2011 onwards after the Commission's Order dated January 27, 2011. MSEDCL has taken approval of the Commission for an amount of Rs. 87 Crore for implementing the schemes like Gaothan Feeder Separation Scheme. This scheme would provide regular supply of electricity to the consumers.
- d) However, in view of the Tribunal's aforesaid Judgment, where it has not mentioned any status quo, still MSEDCL has stopped the development activities because of which the consumers are affected.
- e) The Applicant submitted that MSEDCL used to provide electricity to MPECS and MPECS further used to supply the same to its consumers. Therefore, MPECS is the bulk electricity consumer of MSEDCL. Moreover, MPECS has huge outstanding payable to MSEDCL, hence MPECS is classified into F category. Due to which the consumers of MPECS suffer from Load Shedding for about 16-17 hrs and 11-12 hrs per day.

- f) Further, the Applicant submitted that under Section 43 (3) of the EA 2003, it is the duty of the Distribution Licensee to distribute electricity within a period of one month, failure to which the Distribution Licensee shall be liable for penalty.
- g) In view of the above mentioned points, the Applicant prayed before the Commission that *“by allowing this petition/ application/ request, the MSEDCL be directed to continue all the scheduled developments schemes/ works into its area of operation as well as further direction to consider and grant the request of new connection of electricity to the consumers.”*

11. During the hearing on February 24, 2012, Advocate Deepa Chawan appeared on behalf of MSEDCL. While Advocate Shaunak Thacker and Advocate Bhavesh Panjuani appeared on behalf of MPECS. Shri Bhanudas Murkute appeared on behalf of Jagran Manch.

12. Ms. Deepa Chawan, Advocate and Shri. Shaunak Thacker, Advocate submitted that they have been served with affidavit from the President, Jagran Manch. President Jagran Manch submitted that subsequent to the Hon'ble Tribunal's aforesaid Judgment, MSEDCL has stopped releasing new connections even to essential category of consumers like hospitals, schools etc. However, MSEDCL submitted that it has only stopped the infrastructure activities but not the new connections to schools/hospitals. However, if Jagran Manch provides the information of applicants who have not received power supply connections, then MSEDCL would take appropriate action in the matter.

13. After hearing the parties, the Commission directed the parties to file their submissions before the next date of hearing.

14. The Commission vide Notice dated February 24, 2012, scheduled a hearing in the matter, on March 2, 2012 in the presence of Authorised Consumer Representatives.

15. During the hearing held on March 2, 2012, Deepa Chawan Advocate, Shri C.A. Gadre, GM, MSEDCL and Shri S.S. Dhande, C.E. Comm, MSEDCL appeared on behalf of MSEDCL. While Shri. Shaunak Thacker, Advocate and Shri. Bhavesh Panjuani Advocate appeared on behalf of MPECS. Shri Bhanudas Murkute appeared on behalf of Jagran Manch.

16. Advocate Deepa Chawan submitted that as far as new connections are concerned, where additional infrastructure is not required these new connections are being released. The Commission has accorded approval for GFSS DPR of about Rs. 87 Crore. . However, the Hon'ble Tribunal's Judgment has caused regulatory uncertainty and MSEDCL feels that unless the same is clarified, they should not carry out the Capex programmes. Therefore, MSEDCL needs guidance from the Commission on this.

17. Representative from Jagran Manch, Shri Bhanudas Murkute reiterated that MSEDCL vide letter dated January 29, 2012 has stopped providing new connections where new infrastructure is required.

18. Mula Pravara vide an affidavit dated March 1, 2012 made the following submissions:

- a) The letter of MSEDCL dated January 29, 2012 should not be treated as a Petition and the relief sought is not in the jurisdiction of the Commission with respect to giving guidance to the Distribution Licensee. Since, the State Commission's function as per Section 86 of the EA 2003, it does not contemplate advising Distribution Licensees.
- b) With regards to the distribution network, MPECS submitted that MPECS has set up a distribution network with equipments and allied assets amounting to about Rs. 162 Crore covering about 183 villages in Ahmednagar district up to February 1, 2011. Out of Rs. 162 Crore, about 80% assets .i.e. Rs. 145 Crore were purchased and developed for the last 10-15 years.
- c) Further, MPECS submitted that it has spent for the purchase of new assets and replacement of assets and carried out the maintenance and improvement work from time to time. It has also submitted the details of the year wise Substation Maintenance Report. Therefore, no complaints regarding frequent breakdown were raised even by MSEDCL after takeover of their network from February 1, 2011.
- d) MPECS has requested MSEDCL vide letters dated February 15, 2012 and February 27, 2012 for documents regarding information relating to the infrastructure and developmental activities carried out in the distribution area of MPECS. However, no reply was sent to MPECS by MSEDCL.

Further, MPECS submitted that MSEDCL is implementing the GFSS in the MPECS area. However, MPECS feels that it is not essential to implement such schemes since; MPECS has been successfully providing the electric supply so far. MPECS submitted that GFSS is the MSEDCL's own policy which would lead to discrimination among Residential and Agricultural consumers. Therefore, implementing such schemes ultimately leads to tariff hike of the consumers.

19. MSEDCL vide letter dated March 29, 2012 submitted its submissions as under:
- a) MSEDCL is of the view that the Hon'ble ATE vide its Judgment dated December 16, 2011 has set aside the Commission's Order dated January 27, 2010 inter-alia granting of licence to MSEDCL.
 - b) The ATE has considered the provisions of the Electricity Supply Act, 1948, in this context the Commission would have to consider the status of MSEDCL in light of Section 26 of the 1948 Act.
 - c) Moreover, the consumers of MSEDCL need to be heard in this regard. Therefore, only after that the status of MSEDCL related to further investigation can be concluded.
 - d) MSEDCL submitted that the 1948 Act was itself a license for the erstwhile MSEB and the Board was established for the entire state of Maharashtra. Therefore, in light of Section 2 (b) of the 1910 Act and Section 5, 26 of the 1948 Act, the area of supply of the Board was the entire State (including the supply/operation area earlier served by MPECS).
 - e) Therefore, MSEDCL submitted that the infrastructure development work in the four talukas, where MSEDCL is not a Distribution Licensee, presently ought not to be carried out by MSEDCL. However, MSEDCL would continue to maintain proper services in the area of supply in order to avoid hardships to the consumers in the four talukas.

20. Heard the parties. It is important to respect and implement the Hon'ble Tribunal's directions contained in the penultimate part of its judgement dated December 16, 2011 which reads as follows:- *"After pronouncement of judgment, the learned Counsel for the parties request for issuing of consequential directions with regard to the existing arrangements and the time frame. Accordingly, we direct the Commission that the process to be completed within three months from today and in the meantime, the existing arrangement may be continued subject to payment of charges to the Appellant to be decided by the Commission after hearing all the parties concerned."*

Hon'ble Tribunal has clearly indicated that the existing arrangement may be continued till the time the matter relating to grant of licence to MSEDCL and / or MPECS is finally decided of by this Commission. The proceedings in relation thereto are pending. To continue the existing arrangement, not only would MSEDCL require to use the already existing distribution network but also may need to build network in order to continue to supply electricity. Hence, in the meantime, the existing arrangement cannot be discontinued by MSEDCL. Once, the final decision on grant of licence to MSEDCL and / or MPECS is taken, if required MSEDCL may file an appropriate application to decide the monetary implication of the investments made for creating infrastructure / network to continue the existing arrangement.

With the above, Case No. 9 of 2012 is disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman