

`Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 1 of 2009**

**In the matter of  
Non-compliance of Order dated 31.05.2008 in Case No. 72 of 2008 and Order  
dated 03.03.2007 in Case Nos. 50, 55, 56 of 2006**

**Shri. V.P. Raja, Chairman  
Shri S. B. Kulkarni, Member  
Shri. V. L. Sonavane, Member**

V-Sector Udyojak Multipurpose Foundation,  
Jalgaon

.....Petitioner

V/s

Maharashtra State Electricity Distribution Company Ltd.

.....Respondent

**ORDER**

**Dated: March 25, 2010**

V-Sector Udyojak Multipurpose Foundation, Jalgaon (“Petitioner”) submitted a petition under affidavit on 16.03.2009 seeking directives against the Respondent, Maharashtra State Electricity Distribution Company Ltd. (“MSEDCL”) alleging non-compliance of the Commission’s Order dated 31.05.2008 passed in Case No. 72 of 2008 and Order dated 03.03.2007 passed in Case Nos. 50, 55, 56 of 2006.

2. The prayers of the Petitioner are as follows:

- “
- (a) *Hold that the Respondent is guilty of non-compliance of the directions issued by this Hon’ble Commission as per the Operative Order dated 31<sup>st</sup> May, 2008 as well as detailed order dated 20<sup>th</sup> June, 2008 and the Respondent may be imposed penalty for intentional breach and non-*



- compliance of the directions of the Commission, as per the provisions of section 142 read with section 149 of the Electricity Act, 2003;*
- (b) The Hon'ble Commission may call for the names of the concerned Officers of the Respondent responsible for non-compliance of the Commission's directions and punish them with imprisonment under Section 146 of the Electricity Act, 2003;*
  - (c) The Hon'ble Commission may kindly issue direction for investigation to be carried out in the aforesaid subject-matter;*
  - (d) Hold that the Respondent is also guilty of changing the meters without complying the requisite obligations as per the section 163 of the Electricity Act, 2003;*
  - (e) By way of interim mandatory directions the Respondent be directed to purge the disobedience by immediately issuing bills as per the directions of the Hon'ble Commission till the final disposal of this petition / application;*
  - (f) Further the Respondent be directed to give credit in future bills issued by the Respondent in the next months in compliance as per the above prayer clause b;*
  - (g) In view of extreme urgency in the matter the petition be heard and decided on priority by granting expeditious hearing;*
  - (h) Further the Hon'ble Commission be please to direct the Respondent to pay Rs. 1,00,00,000/- to the Petitioner / Applicant as and by way of damages caused due to their fraudulent act and such amount for legal charges and ancillary expenses incurred for the file of the present petition.*
  - (i) Grant any other reliefs which this Hon'ble Commission deems fit in the fact and circumstances of the case."*

3. The Petitioner submits that it is a registered association having its registration no. MH-9707/JAL and its member companies are incorporated under the Companies Act, 1956 and are located and situated at Jalgaon. All these members are consumers of MSEDCL under the LT-V category.

4. The Petitioner has referred to the Commission's Order dated 31.05.2008 as well as 20.06.2008 in Case No. 72 of 2007 related to MSEDCL's petition for Annual Performance Review (APR) for FY 2007-08 and determination of ARR and Tariff for FY 2008-09. The Petitioner has quoted a portion from the said order dated 20.06 2008 at page no. 203 as follows:

*".....In line with the Commission's ruling in the MYT Order, since MSEDCL is yet to achieve 100% MD metering for LT V industrial consumers above 20 kW (around 97% completion has been indicated by MSEDCL till date), the MD tariffs for LT V industrial consumers will not be made effective. Till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs..."*

The Petitioner has also quoted LT Tariff effective from 01.06.2008 as given in page no. 213 of the Order dated 20.06.2008, where the Commission has stated that the LT-V



category shall be charged @ Rs. 100 per kVA per month only after 100% installation of the MD meters, and during the time of incomplete installation of 100% MD metering, the consumers along with the Petitioner will be charged @ Rs. 60 per HP per month for 50% of the sanctioned load.

5. The Petitioner has also referred to the Order dated 03.03.2007 passed by the Commission in Review Petition filed by Chamber of Small Industry Association, Laghu Udyog Bharati and Kolhapur Engineering Association being Case No. 50, 55 and 56 of 2006. The portion quoted by the Petitioner is as follows:

*“32. .... directs MSEDCL to revert back to the earlier prevailing tariff of Rs. 60 per HP per month applicable for 50% of the sanctioned load, till such time as 100% MD metering is completed by MSEDCL.”*

The Petitioner herein has submitted that the Commission had been of the view that the consumers were subjected to unintended tariff shock due to the failure of MSEDCL to install MD meters and to educate the consumers regarding the implications of proper assessment of contract demand and the need for registering the same with MSEDCL.

6. Further, the Petitioner submits that MSEDCL had filed an Appeal before the Appellate Tribunal of Electricity against the order dated 03.03.2007 passed by the Commission. The Petitioner has referred to the following passage from the judgment of the Appellate Tribunal of Electricity dated 27.03.2008 in the above appeal:-

*“...the economic progress of the State depends upon its industrial output. Closure of small scale units which were not able to bear the hike in their electricity bills does not augur well for the economic health of the State. The MERC had directed the MSEDCL to complete the installation of MD meters for LT-V category. The data given by the MERC in its impugned order clearly shows that the work was not completed within the stipulated time and it was proceeding on tardy pace. Pending the installation of meters, the method for billing placed a heavy burden on LT-V consumers.*

*The grievance of the consumers relating to bills for the intervening period between the date of the order of the MERC, viz. October 20, 2006 and installation of MD meters is justified. Therefore, we are of the view that the relief granted by the MERC by directing MSEDCL to revert back to the earlier prevailing tariff of Rs. 60/- per HP per month applicable for 50% of the sanctioned load, till such time as 100% MD metering is completed by MSEDCL cannot be faulted.....”*

7. The Petitioner submits that, in spite of the above orders of the Commission as well as the Hon'ble Tribunal, MSEDCL had been generating bills @ Rs. 100 per kVA per month of August, 2008 without complying with the above orders.

8. The Petitioner had thereafter issued a letter dated 23.08.2008 to MSEDCL with a copy to the Commission, inquiring the status of the installation of the ToD meters and also pointed out therein that MSEDCL had completed 70-80% of ToD metering in MIDC,



Jalgaon. The Commission, taking note of the above letter, issued a letter dated 05.09.2008 to MSEDCL inquiring the status of the ToD metering progress and further directed MSEDCL to reply to the queries raised by the Petitioner latest by 20.09.2008.

9. The Petitioner states that, it thereafter issued a letter dated 29.09.2008 stating that in spite of the direction of the Commission vide letter dated 05.09.2008, MSEDCL did not reply to the Petitioner's queries and had been generating bills @ Rs. 100/- per kVA per month without following the orders of the Commission. Another fact was brought to notice in the above letter, that MSEDCL had replaced the old meters by TOD meters on / before 27.09.2008 without complying with Section 163 of the EA 2003, thereby not informing the consumers and installing the same in their absence. The Commission had again issued a letter dated 10.08.2008 directing MSEDCL to take immediate action and to reply to the queries raised by the Petitioner by 17.08.2008 under intimation to the Commission. In reply thereafter, MSEDCL vide their letter dated 14.10.2008, informed the Petitioner as well as the Commission that the installation of TOD meters is 100% complete for all the consumers.

10. The Petitioner submits that thereafter, it issued letter dated 08.12.2008 to MSEDCL along with a copy of the same to the Commission, wherein the Petitioner had stated certain facts as revealed from the documents received under the Right to Information Act from MSEDCL. Based on those documents, the Petitioner submits that it is difficult for them to believe that MSEDCL was able to complete the installation of the meters within one day without the availability of 383 meters, and such is evidence in itself to prove that the information and data provided by MSEDCL was incorrect and misleading.

11. Having stated the above facts, the Petitioner submits that MSEDCL had committed serious impropriety of misinterpreting and misrepresenting the orders of the Commission and that it is a fit case under Sections 142, 146 read with Section 149 of the EA 2003 to impose penalty and punish MSEDCL with imprisonment for intentional non-compliance of the directions of the Commission.

12. The Commission vide notice dated 09.04.2009 fixed the hearing in the above matter on 17.04.2009. During the hearing on 17.04.2009, Adv. Shri Sandeep Parekh appeared on behalf of the Petitioner and Adv. Deepa Chawan appeared on behalf of the Respondent. During the hearing, the Petitioner submitted that as per the Commission's directions, MD Tariff would be made applicable for LT-V industrial consumers by MSEDCL only after the 100% installation of MD Meters. However, MD Tariff was made applicable for LT-V industrial consumers from the month of August, 2008 without completing 100% MD metering by MSEDCL.

13. MSEDCL referred to Clause 44 of the Operative Order issued by the Commission in Case No. 72 of 2007 dated 31.05.2008. The following passage has been quoted therefrom:

*44. The Time of Day (ToD) tariffs will be applicable compulsorily to most HT consumer categories, including the newly created HT II commercial category, but excluding HT III Railways, Mula Pravara Electric Co-operative Society, which is a licensee, HT Agriculture and HT VI Group Housing Societies. ToD tariffs will also*



*be compulsorily applicable to LT V industrial category above 20 KW sanctioned load, as well as optionally available to LT - V category consumers having sanctioned load below 20 KW, who have TOD meters. The TOD tariffs have been retained at existing levels.*

14. MSEDCL submitted that MSEDCL vide its letter dated 14.10.2008 informed the Commission that 100 % TOD meters were installed for all consumers having load equal to 20 KW and above. MSEDCL also added that TOD Meters are having extra feature of Time-Zone in addition to the features of MD Meters. Hence, MD Meters were replaced by ToD Meters. MSEDCL further submitted that there was no wilful disobedience of the Commission's Orders / directives.

15. After hearing the parties, the Commission directed the Petitioner and the Respondent to give their written arguments and factual information in the matter, on affidavit.

16. The Petitioner vide its letter dated 06.05.2009, submitted its written argument on affidavit dated 02.05.2009. In the written submissions, they have submitted that as per Commission's Order dated 31.05.2008 and 03.03.2007, the Commission directed MSEDCL to install 100% MD Meters with TOD facility to LT-V consumers before implementing MD based tariff which could record maximum demand in a month during 0600 hrs to 2200 hrs etc. from which billing demand of 65% of MD recorded could be charged. Further, it submitted that MSEDCL was aware about the Commission's order and directions. The status of compliance of installing MD metering with TOD facilities being given by MSEDCL is stated to be completely false and wrong. Hence, MSEDCL is misleading the Commission regarding the compliance. In the written submissions, the Petitioner has given certain additional prayers as under:

“

*(j) In addition to the previous prayers the Petitioner / Applicant prays that all the officers of MSEDCL involved in this fraudulent and inappropriate documentation be punished and a suit to the effect of filing of wrong affidavit be filed against the respective officers holding the Post {Designation} as on 1<sup>st</sup> Aug 2008.*

*(k) Power factor incentives to be continued to avoid switch-off of the Capacitors by the consumers which will be a net loss for MSEDCL.*

*(l) If the MSEDCL still says that the replaced Old Meters were already recording the maximum demand in a month during 0600 Hrs to 2200 Hrs, then the Hon. Commission is requested to Order the Enquiry regarding the details of Old Meters which were replaced after 31<sup>st</sup> July 2008.”*

17. The Commission passed its Order dated 17.08.2009 in this matter, where after considering the materials placed on record, the Commission stated as follows in para 14 of the order:

“



*In light of the above, in the facts of this case unless 100% MD meters are installed by MSEDCL, the MD tariff for LT-V industrial customers will not be made effective. In all such cases where MSEDCL has contravened the direction of the Commission in this regard, MSEDCL would be liable to pay penalty under Section 142 of the EA 2003.”*

18. The Commission in this Order dated 17.08.2009 directed MSEDCL to explain within twenty one days from the date of the Order, as to why penalty under Section 142 be not imposed on it. The Commission was also of the view in the Order dated 17.08.2009 that, once proceedings under Section 142 is invoked hereunder, there is no need to separately invoke the provisions of Section 149, which in any case would not be applicable to the present case in view of the Appellate Tribunal’s judgment dated 31 July, 2009 in Appeal No. 53 of 2009 as under:

*“In brief, it shall be stated that Section 142 which deals with the violation of direction is not an offence and it cannot be linked with Section 149 which relates to the offences mentioned in the above sections in Part XIV.”*

19. MSEDCL vide its letter dated 10.09.2009, requested the date of submission of the reply to be extended for a period of one month i.e. upto 14.10.2009 for preparation and collection of factual information from their field officers. The advocates for MSEDCL vide letter dated 03.11.2009 requested the date of submission to be further extended upto 03.12.2009.

20. MSEDCL submitted its reply in the matter on 03.12.2009. The submissions made by MSEDCL are as under:

- a) MSEDCL submitted that any non-compliance of the orders of the Commission is wholly and purely unintentional and inadvertent.
- b) It was submitted that it will refund any excess amounts received from the consumers in the manner directed by the Commission.
- c) It was submitted that the figure of TOD meters to be installed in Jalgaon circle as on 25.06.2008 and 02.07.2008, which was submitted to CE Nashik was mentioned as “zero” which was a correct figure.
- d) It was submitted that the actual position for Jalgaon circle is as reported in the letter dated 25.06.2009.
- e) With regard to the allegation of the Petitioner w.r.t. the letter no. 4283 dated 31.07.2009 wherein allegedly it was stated that TOD metering could not be completed for want of TOD meters of specific capacity, it was clarified by MSEDCL that this letter in reality referred to a specific no. of TOD meters which was needed to be replaced because of a defect.
- f) It was submitted that in view of the operative order of the Commission dated 31.05.2008 and detailed order dated 20.06.2008, MSEDCL was required to replace a very large number of existing meters with TOD meters throughout the zone which numbered to around 38,000 units and it had applied due prudence to complete the same as expeditiously as possible. It was further submitted that, given the extent of the replacement, it is not unexpected that there may be isolated



incidents of defects, shortages and similar contingencies from time to time, and therefore every such incident, whether singly or jointly, should not be put across by the consumers as non-compliance of orders / directives of the Hon'ble Commission.

It was submitted by MSEDCL that, with regard to the greater public benefit, the revised tariff should be allowed to be made operational in an expeditious manner given the overall compliance by MSEDCL of the orders of the Commission.

It was submitted that, in the event the Commission determines that there has been any default on the part of MSEDCL, the same may kindly be condoned and that MSEDCL is ready and willing to refund any excess amounts that may have been inadvertently recovered from consumers as may be determined by the Commission.

It was also submitted that inadvertent errors committed on the part of MSEDCL may be condoned without imposing penalty as it was wholly inadvertent and unintentional on the part of MSEDCL.

21. The Commission vide notice dated 29.12.2009 fixed a hearing in the matter on 07.01.2010. During the hearing on 7.1.2010, Shri Bhuneshwar Singh, President, V-Sector Udyojanak Multipurpose Foundation, appeared on behalf of the Petitioner, and Shri Rahul Sinha, Advocate appeared on behalf of the Respondent, MSEDCL.

22. The Petitioner in the hearing submitted its reply in the matter inter alia stating that, as per Section 62(6) of EA 2003, MSEDCL shall have to refund the unjustly collected money with interest if directed by the Commission, and prayed that it may be refunded at one time.

23. After hearing the parties and considering the materials placed on record, the Commission is of the view that a similar case has been decided by the Commission vide its Order dated March 5, 2010 in Case No. 26 of 2009 in the matter of MRVGS' Petition for non-compliance of the Tariff Order dated 20.06.2008 read with earlier Orders dated 20.10.2006 and 18.05.2007. The present case is covered by the findings given in the said Order dated March 5, 2010.

In light of the above, the present petition stands disposed of.

Sd/-  
(V. L. Sonavane)  
Member

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(K. N. Khawarey)  
Secretary, MERC