

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.org.in
Website: www.mercindia.org.in

Misc. Application No. 1 of 2009 in
Case No. 10 of 2007

In the matter of
Application filed by MSEDCL initiating enquiry in respect of revocation /
suspension of licence of MPECS

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

Maharashtra State Electricity
Distribution Company Limited

.... Petitioner

Vs.

1. Mula Pravara Electric Co-operative Society Ltd

2. The State of Maharashtra

... Respondents

ORDER

Dated: 8th February, 2010

Maharashtra State Electricity Distribution Company Limited (“MSEDCL”) filed a Misc. Application (numbered as 1 of 2009) on 19.11.2009 in Case No. 10 of 2009 praying as under:

“

(a) *This Hon’ble Commission be pleased to recall the order dated 2nd February 2009 passed by this Hon’ble Commission in Case No. 10 of 2007;*

(b) *This Hon’ble Commission be pleased to restore and revive the proceedings to the file of this Hon’ble Commission to enable the Applicant / Petitioner to file any applications / interim applications therein, in accordance with law;*



(c) *To proceed hearing of the Case No. 10 of 2007;*

(d) *To pass such other order deemed to be fit.”*

2. It is averred in the said application that Mula Pravara Electric Co-operative Society Ltd., (“MPECS”) is unable to pay its dues to MSEDCL which are outstanding since long where the arrears have mounted to the tune of Rs. 1,820 crore approximately, till September, 2009 in respect of non-payment of electricity dues.

3. MSEDCL has stated that, due to the aforesaid arrears which MSEDCL is unable to recover from MPECS, MSEDCL is, for quite some time, facing grave financial crisis as the default on the part of MPECS to clear the said arrears as well as the current bills, are continuous in nature. MSEDCL has also submitted that the aforesaid circumstances were pointed out by it during the hearing before the Hon’ble Supreme Court in Civil Appeal Nos. 6044 of 2008, 6043 of 2008 and 4231 of 2008 filed by MPECS challenging the Appellate Tribunal’s judgement dated 28-1-2008.

4. MSEDCL has also submitted that, the proceedings that are pending before the Hon’ble Supreme Court in the aforesaid Civil Appeals were kept in view by the Commission while the Commission vide order dated 2-2-2009 adjourned *sine die* the proceedings initiated by MSEDCL under its petition numbered as Case No. 10 of 2007. MSEDCL further submitted that though the Commission gave liberty to mention the matter for listing after the judgement from the Hon’ble Apex Court is received, the following facts and circumstances are required to be considered by the Commission in order to recall the said order dated 2-2-2009 and to restore and revive the proceedings thereunder:

(i) Due to the continuous nature of payment default of MPECS culminating to approximately Rs. 1820 crore, the financial position of MSEDCL is severely and adversely affected resulting in irreparable loss;

(ii) That the Hon’ble Apex Court vide its order dated 20-7-2009 in the aforesaid Civil Appeals was pleased to reject the prayer made by MPECS for grant of interim relief, and thus there is nothing which precludes the Commission from proceeding with the hearing of the petition in Case No. 10 of 2007;

(iii) Though disconnection notices have been served by MSEDCL upon MPECS for non-payment of electricity dues, actual disconnection has not been carried out keeping in view the proceedings pending before the Hon’ble Apex Court and keeping in view the fact that a large number of persons would be affected in the three talukas where MPECS supplies electricity;

(iv) The fact that the Appellate Tribunal has dismissed an appeal filed by MSEDCL challenging the order dated 2-2-2009 on the ground of delay, but with the observation that “...It is open to the Appellant / Petitioner to approach the Commission to seek appropriate relief, if so advised.”

MSEDCL has urged that no stay order has been passed by the Hon’ble Apex Court in the aforesaid Civil Appeals. It has been submitted that therefore, the Commission can hear the petition in Case No. 10 of 2007.



5. MPECs filed its reply and preliminary submissions on 29-12-2009 stating therein that there were severe delays and latches on the part of MSEDCL as they are before the Commission much after the period of 45 days required for seeking a review, and that due to the pending proceedings before the Supreme Court the present application should not be admitted.

6. The Misc. Application was heard on 29-12-2009. Smt. Deepa Chawan, Advocate appeared for MSEDCL. Shri Rana Biswas, Advocate appeared for MPECS. Shri. Vinal Sonpal, appeared for The State of Maharashtra ("GOM"). Prof. Dr. G.H. Barhate, organiser, Grahak Panchayat, Shrirampur, appeared as a consumer representative authorized on a standing basis in this case.

7. The GOM filed its affidavit on 15-1-2010 through its Under Secretary. It is stated in the said affidavit that all issues on which the Commission had directed the GOM to file written submissions, were of no relevance to the present matter. It has also been stated therein that the present application of MSEDCL may be disposed of in accordance with law.

8. MSEDCL filed an affidavit on 25-1-2010 through its General Manager (Commercial). The issue of grave financial condition of MSEDCL due to continuous non-payment of electricity dues by MPECS, have been stated in the said affidavit. In the circumstances, it has been urged that the license of MPECs ought to be revoked by the Commission and that MSEDCL should be appointed as the administrator to discharge the functions of MPECS to distribute electricity. This should be without prejudice to its rights to recover the electricity dues.

9. A hearing on the Misc. Application was held on 28-1-2010. Smt. Deepa Chawan, Advocate appearing for MSEDCL urged that the petition in Case No. 10 of 2007 be admitted and notices for revocation of license of MPECS under Section 19 or suspension under Section 24, be issued and enquiry contemplated under Section 19 be commenced because there are enough admissions on the part of MPECS in its annual reports regarding the arrears that are due on the part of MPECS to MSEDCL. Counsel for MSEDCL submitted that there are more than one ground under Section 19 as well as Section 24 for the Commission to invoke the said sections. Counsel for MSEDCL also submitted that, there is no bar on the Commission to issue directions: (i) for payment of entire current bill; (ii) reduction of arrears; (iii) payment security mechanism.

10. Counsel appearing for MPECS submitted that there were severe delays and latches on the part of MSEDCL as they are before the Commission much after the period of 45 days required for seeking a review.



11. Having heard the parties and considering the totality of the circumstances, the Commission is of the view that while issuing its order dated 2nd February, 2009, in Case No. 10 of 2007, it had considered that the matters before the Hon'ble Supreme Court would be settled in one way or the other and help this case. While it has now been brought to Commission's notice that the Apex court vide its Order dated 20th July, 2009 has not even granted stay to the respondents in respect of those cases and as such, holding up this case would not be fair to the petitioner and the prayers made by the petitioner are required to be heard and examined by the Commission for which the main petition needs to be admitted. None of the parties have produced any order that stays the proceedings in Case No. 10 of 2007 or any order that requires the Commission not to proceed with the proceedings in the Case No. 10 of 2007.

12. On the objection of delay and laches as argued by Counsel for MPECS, the Commission does not sustain the same as what has been sought under the Misc. Application filed by MSEDCL is not review or recalling of the order dated 2-2-2009 but a hearing of its petition, which stood adjourned pursuant to the said order. As regards prayers (a) and (b) contained in Misc. Application No. 1 of 2009, the Commission is of the view that under the present application neither is there a question of recalling the order dated 2-2-2009 nor restoration / revival of the proceedings. The Commission does not need to review or recall its order dated 2-2-2009 as the hearing of the main petition was adjourned therein. No decision was given in the said order that requires it to be reviewed or recalled. The proceedings have not been removed from the file so there is no question of restoring or reviving the proceedings to the file. The present Misc. Application seeks to proceed with the hearing of the Case No. 10 of 2007 and to pass such other order as deemed fit.

13. The Commission finds it apt to observe that the present case stems from the issues surrounding the supply of electricity in bulk by one distribution licensee to another for retail sale and the buyer licensee's liability to make payment for receiving electricity in bulk. Fundamentally, this is a matter of agreement between the seller and the buyer. There should be an agreement for sale and purchase of electricity. It is for the seller to ensure that it has in place a payment security mechanism such as a letter of credit or such other payment security mechanism that is usually there in electricity business. The seller has not produced any document in this regard. The seller would need to explain as to how it proposes to ensure that it recovers the price at which it has sold or would sell electricity to the buyer. The seller would need to demonstrate what prudent utility practices it has adopted. Section 56 of the Act gives a statutory right to the seller licensee to "*cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee ...through which electricity may have been supplied, ...and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:..*" when any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee in respect of supply. MSEDCL would need to explain why it has not availed of its statutory rights. The Commission notes the technically narrow stand taken by the



GOM in its reply, while the Commission felt that since issues of subsidy paid by GOM to the licensee, implications of disconnection by MSEDCL, other than legal issues etc. would seize GOM's attention and its response would help Commission to decide the matter. However, the GOM may now state (a) what action the GOM has taken pursuant to the Hon'ble Bombay High Court Nagpur Bench order dated 30-4-2003; (b) the present status of the Commission's advice vide its letter dated 27th January, 2004, to the GOM; (c) the amount of subsidy paid till date and payable in future by GOM to MPECs (d) action that the GOM would take in case MSEDCL stops supply of electricity to MPECs for non-payment of electricity dues. The GOM's view on the question of sustenance and existence of an Electric Co-operative Society supplying electricity to rural areas, is involved.

14. The matter therefore stands admitted and the parties are directed to file their written submissions. The matter stands posted for 2-3-2010.

The Misc. Application No. 1 of 2009 stands disposed of.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(K .N. Khawarey)
Secretary, MERC