

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.

CASE No. 1 of 2001

In the matter of
Review Petition of M/s Vidarbha Chamber of Small Scale Industries, Yavatmal
for Review of Interim Order dated 9.1.2003 in the matter of Determination of Tariff
[2001-2002] Applicable to various categories of consumers of
Maharashtra State Electricity Board, and Levying of T&D Loss Charge on the basis of
Differential (Circle/Zone) T&D Losses Evaluation.

Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member

ORDER

Dated: July 15, 2003

The Vidarbha Chamber of Small Scale Industries (VCSSI), Yavatmal, under their Petition dated 10.3.2003, have sought review of the Commission's interim Order dated 9th January 2003, with the following prayers:

- i) *Not to charge T&D losses to all industrial consumers because they are not responsible for high T&D loss levels*
- ii) *Alternatively we pray the Hon'ble Commission to direct MSEB not to impose T&D charges to the consumers covered under Feeders which have lower than 26.87% T&D losses.*

The Review Petition was heard on 17th June 2003 for admission.

2. Under the Interim Order dated 9th January 2003, the Commission had, inter alia, exempted consumers from the levy of Transmission and Distribution loss (TDL) charges in 11 circles of the Maharashtra State Electricity Board (MSEB) where T&D losses were below the benchmark level of 26.87% during a certain reference period, with effect from 1st January 2003. In their Petition and in oral arguments by their Counsel, Shri Ramesh Darda, VCSSI have contended that the 11 Circles excluded by the interim Order consist of industrially developed areas with a larger share of power consumption by industrial units. Citing the example of the sub-station in the Yavatmal MIDC area, VCSSI pointed out that the T&D losses on the two 33 KV express feeders are almost nil, and are around 5% on the 11 KV feeder. Thus, put together, the T&D losses at the Yavatmal MIDC sub-station are less than half a percent. On the other hand, the average T&D losses in the Yavatmal Circle as a whole stand at around 41%. Extending this example to the other

exempted circles, VCSSI has sought to show that losses are much lower where industries have a larger share in energy consumption.

3. The Petitioner also drew attention to the fact that, in its principal tariff Order dated 10.1.2002, the Commission had spared public utilities such as railways, public water works, street lighting and the Mula Pravara Co-operative Society from TDL charges since they do not have any incentive to pilfer in energy. The Petitioner also mentioned that the Commission had stated that it was unfair that a consumer residing in a Circle with a considerably lower T&D loss level should pay the same loss charge as a consumer residing in an area with a high loss level.

4. Counsel for VCSSI submitted that, in fact, T&D losses for supplying power to industrial consumers is far below 26.87% in all Circles of MSEB. Therefore, the Commission's interim Order dated 9.1.2003 only benefits consumers in Circles which have large industrial consumption and are in developed areas, and deprives industries in other areas in whose case T&D losses are also very much less.

5. In oral arguments, VCSSI Counsel submitted that MSEB supplies power to four broad categories of consumers, viz. industrial, commercial, agricultural and domestic. Clubbing together these four categories of consumers in each Circle for the purposes of determining the applicability and extent of TDL charges is inappropriate when the losses on account of industrial units are considerably lower than in the case of the other three categories, and when the data required for determining such losses on account of industry and its separation from other categories is available with MSEB. He submitted that such clubbing together of disparate and unequal categories when a clear distinction can and must be made between industrial and other categories of consumers is an error apparent on the face of the record which merits admission of the Review Petition under Regulation 87 of the MERC (Conduct of Business) Regulations.

6. As agreed during the hearing, Counsel for VCSSI subsequently submitted the SC judgement in the case of *Thungabhadra Industries Ltd. v/s Govt of Andhra Pradesh* [AIR 1964 SC 1372], drawing attention to the following observation of the Court with regard to the ambit of the expression "error apparent on the face of the record":

"There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out" [Para 11]

7. The ambit of review of its Orders by the Commission (keeping in view the separate provisions for appeal to the High Court under Section 27 of the Electricity Regulatory Commissions Act) is constrained by Regulation 87(1) of the MERC (Conduct of Business) Regulations, which reads as follows:

“Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision/ order was passed by the Commission or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within 60 days of the date of decision/ order, to the Commission”.

8. As is clear from the submissions set out above, the Petitioner is essentially seeking a change in the basis of classification adopted by the Commission for the levy or exemption of T&D loss charges. The interim Order which is sought to be reviewed follows from the principal Order dated 10th January 2002 determining MSEB’s tariff. The SC judgment cited by the Petitioner’s Counsel does not also help him to meet the test of Regulation 87. The interim Order dated 9th January 2003, following from the principal Order, sets out the basis for exemption and levy of T&D loss charges on a Circle wise basis for all except a select category of consumers, and any challenge to that basis can only be the subject matter of an appeal under Section 27 of the ERC Act. The Commission cannot ascribe to itself the powers of the High Court by entertaining such a plea in the guise of a review when it goes beyond, and does not meet the parameters laid down under Regulation 87. The Commission, therefore, rejects the Petition as inadmissible under that Regulation.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC.

Sd/-
(A.M. Khan)
Secretary, MERC