

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 13 of 2004

In the matter of
State Govt. subsidy for providing free electricity supply to agricultural consumers.

Shri P. Subrahmanyam, Chairman
Dr Pramod Deo, Member

ORDER

Dated: 23rd August, 2004

In their Petition dated 11th August, 2004, Govt. of Maharashtra (GoM) through Industries, Energy & Labour Department (IE&LD) have set out Cabinet's decision that free electricity supply will be provided to all agricultural consumers of the Maharashtra State Electricity Board (MSEB) and of the Mula Pravara Electric Co-operative Society Ltd. (MPECS) w.e.f. 1st July, 2004. Citing the provisions of Section 65 of the Electricity Act (EA), 2003, GoM have stated that they would compensate MSEB and MPECS to the extent of revenue loss on account of this decision, estimated at Rs 1590.74 crores for the period from 1st July, 2004 to 31st March, 2005. GoM have stated further that MSEB would be compensated through adjustment of the dues payable by MSEB to GoM and the dues payable by MPECS to MSEB, and have prayed that the Commission may allow them to do so.

2. In their Reply submitted on 16th August, 2004, MPECS have stated that their average monthly bulk power purchase for agricultural requirements amounts to Rs 862.68 lakhs, whereas their average monthly receipts from sales to agricultural consumers is only Rs 273.39 lakhs. Thus, MPECS are incurring a loss of Rs 589.29 lakhs each month on the agricultural component, for which also subsidy should be provided by GoM. MPECS have also pointed out that matters relating to MPECS are already before the Cabinet in the context of the advice and recommendations given by the Commission, and that this issue may also be kept in view. MPECS have concluded with the following prayers:

- (i) to direct MSEB not to charge electricity bill to MPECS to the extent of the agricultural component, and that MSEB may be compensated by GoM to that extent; OR
- (ii) to direct GoM to remit to MPECS the amount equal to their agricultural revenue instead of adjusting against disputed arrears to MSEB. The difference between MPECS' agricultural power purchase and agricultural revenue should not be shown as arrears due from MPECS to MSEB.



3. In their supplementary submission dated 16th August, 2004 in continuation of their earlier affidavit, GoM have stated that they would have to bear the financial burden on account of revenue loss to MSEB/ MPECS due to concessional tariff/ free supply to agricultural pump sets in 2004-05 as follows:

Sr. No.	Particulars	Amount (Rs. in crores)
1.	Concessional rates tariff for Agricultural Consumers (1st April 2004 to 30th June 2004)	252
2.	Free supply to Agricultural pump sets (1st July 2004 to 31st March 2005)	1180
3.	Total amount payable to MSEB (2004-2005)	1432
4.	Provision already made (2004-2005)	587
5.	Balance provision to be made for MSEB	845
6.	Provision to be made for Mula Pravara Electric Co-operative Society	50
	Addl. provision to be made in the year (2004-2005)	895

GoM have stated that a budget provision of Rs 587 crore has already been made against subsidy for agricultural consumers in 2004-05, and provision for the remaining amount of Rs 895 crore would be made through Supplementary Demand in the next Legislature session. GoM have further stated that Rs 237 crores have already been released on 18th June, 2004 to MSEB out of the budget provision of Rs 587 crores for the earlier concession for the first quarter. GoM have reiterated that they be allowed to adjust the amount of subsidy against the dues payable by MSEB to GoM and by MPECS to MSEB.

4. The matter was heard on 16th August, 2004. At the outset, Shri R.N. Ambrith, Deputy Secretary, IE&LD, cited the provisions of Section 65 of EA, 2003 under which GoM had approached the Commission, and reiterated the submissions in their Petition. He also cited the financial details contained in GoM's supplementary submission furnished before the hearing.

5. Shri Jayant Kawale, Chairman, MSEB clarified that the bill for agricultural consumers for the 2nd quarter (starting 1st July, 2004) is likely to be Rs. 395 crores. The compensation required for the other agricultural concessions payable for the 1st quarter is Rs 252 crores against the existing budget provision of Rs 587 crores for agriculture for the whole year. Thus, an additional budget provision of around Rs 60 crores requires to be made even for the 2nd Quarter by taking an advance from the Contingency Fund or by re-appropriation from out of the budget provision for concessions against the powerloom tariff, considering the fact that the next Legislature session will take place in November / December 2004 and the Supplementary Demands could be passed only then.

6. With regard to GoM's prayer to allow them to pay compensation by adjustment of dues payable by MSEB, Chairman, MSEB submitted that upto now such adjustments have been possible, as envisaged in the earlier Orders of the Commission, since there were balance amounts due from MSEB to GoM. However, at present there are no such payments due. Thus, there being no scope for adjustment left for the 2nd quarter, the required compensation of around Rs 395 crores would have to be paid by GoM to MSEB in cash prior to the raising of bills, according to the quarterly agricultural billing cycle, from the end of September, 2004. If this is done, the issue of the manner of compensation for the subsequent periods can be deferred for later consideration. The Commission observed that the Tariff Regulations notified on 10th June, 2004 are clear that any shortfall in



compensation would have to be reflected in the bills actually raised and, in such an event, the question of free power would not arise.

7. Shri R.V. Kulkarni, Managing Director, MPECS summarized the points made in their Reply. He stated that the difference between the amount which MPECS have to pay to MSEB for monthly power purchase and the much lesser amount recoverable from the agricultural consumers should be waived or otherwise provided for, and that the dispensation proposed by GoM will not leave sufficient liquidity with MPECS to run their day-to-day operations.

8. Dr. Ashok Pendse of Mumbai Grahak Panchayat (MGP) submitted that, under Section 65, payment of compensation has to be made 'in advance'. The Concise Oxford English Dictionary defines the term "advance" as meaning 'before it is due'. The term 'due' is defined as 'what is owed to one'. Therefore, there is no provision under Section 65 for payment of compensation by adjustment. He pointed out that, under the two-part tariff, fixed charges apply as soon as a consumer is connected, and only the energy charges apply upon actual consumption. Therefore, there is also no provision for adjustment at a later stage and, thus, GoM's decision cannot be effective from a past date, i.e. 1st July, 2004. Dr. Pendse also referred to the words "the amount to compensate the person affected by the grant of subsidy" in Section 65. He submitted that, firstly, in addition to MSEB and MPECS, there are other organizations which are affected such as BEST, Reliance Energy, Military Engineering Services, Maharashtra State Farming Corporation and even the Railways which have agricultural pump sets. Secondly, all consumers are also affected since the decision to provide free power will have an impact on T&D losses and their computation. Even at present, these losses had compelled the Commission in its last tariff Order to levy a 'Regulatory Liability Charge' on certain consumers who would have to bear an even higher burden in future. The Commission observed that it was a moot point as to whether Parliament had intended the term 'person affected' to have such a wide ambit.

9. Shri Shantanu Dixit of Prayas submitted that GoM's decision would vitiate the repayment culture, and the adverse impact on MSEB's ability to recover would affect all consumers. Therefore, compensation would have to be paid for that also. Stating that, under Section 65, only the manner of payment is to be decided by the Commission, he suggested that the Commission should call and hear the compensation claims of all those who would thus be affected before taking a decision. The Commission observed that it seems that, under Section 65, the persons directly affected are MSEB and MPECS considering the fact that GoM are proposing to provide their agricultural consumers full concessions against tariff.

10. Chairman, MSEB submitted that the payment of compensation to MSEB becomes due at the end of the quarter and not at the beginning because recovery from agricultural consumers by MSEB starts only then. However, Dr. Pendse reiterated his contention regarding when fixed charges become due.

11. Shri Dixit submitted that this was the most regressive decision in the last 5 years and would have a major impact on the power sector. It would also lead to wastage of power and water resources, affect the water table and adversely effect the paying culture. He pointed out that in an earlier Order dated 28th March, 2001 (para 4), the Commission had raised various issues which had to be addressed. Shri Dixit submitted that the Commission's responsibility is not limited to Section 65 and urged the Commission to seek an affidavit from GoM on the above wider issues.



12. With regard to payment of arrears, Chairman, MSEB drew attention to the Krishi Sanjivani Yojana which has been extended. Technically, for past arrears, MSEB are free to disconnect. Shri Dixit pointed out that arrears from agricultural consumers are already to the tune of Rs 1500 crores. With the present decision, there is no reason why defaulters should now make payment. The wider impact of GoM's decision should be considered by the Commission since it affects MSEB's liquidity and service performance and impacts on all consumers. Thus, GoM should compensate MSEB for these arrears, possibly by an interest free loan repayable as and when dues are recovered. Shri Dixit also urged that MSEB should file an affidavit regarding the position consequent upon the Commission's earlier subsidy Orders passed under EA, 2003, and the actual compensation paid by GoM vis-à-vis the requirements. Further, Shri Dixit pointed out that only two Zones, viz. Nashik and Kolhapur, have a share of 60% of the total energy consumption by agriculture, and queried whether the GoM's decision would meet the test of the guiding principles under Section 61. He also drew attention to the serious concern expressed by the Commission with regard to the impact on repayment culture at the end of its Order regarding the Krishi Sanjivani Yojana. The Commission observed that, whereas Section 86(1) refers to the mandatory functions of the Commission, Section 86(2) was restricted to giving advice to GoM on wider issues.

13. Shri Dixit submitted that the Commission should at least look at the compensation to be paid on account of arrears. The Commission observed that the scope of Section 65 appears to be limited and specific, whereas the Commission could advise the Govt. separately on the wider ramifications under Section 86(2). Under Section 65, it is the prerogative of GoM to provide subsidy against tariff regardless of the indirect impacts provided they fulfill certain conditions. Shri Dixit responded that his contention was that the Commission should quantify the amount of compensation taking into account both the direct and indirect impact as well as the arrears.

14. Dr S.L. Patil of Thane Belapur Industries Association (TBIA) submitted that the GoM's decision would have an impact on T&D losses since all such losses could be ascribed to agriculture, and this would result in increase in tariff through an increase in Regulatory Liability Charge or other means. Thus, the entire tariff determination exercise conducted by the Commission will be vitiated, and the adverse impact loaded on all other consumers in future.

15. The Commission stated that the authorized consumer representatives should submit the contentions made at the hearing in writing with a copy to the Principal Secretary (Energy). Principal Secretary (Energy) was advised to take the opinion of the Advocate General on points of law and furnish GoM's response by 23rd August, 2004 with a copy to the consumer representatives. An issue was also raised as to whether MSEB would be bound by GoM's decision. Thereafter, a further hearing would be held only if the Commission feels it necessary to do so. GoM should also separately submit how far it has complied with the Commission's earlier Orders relating to subsidy.

16. In their written submission dated 17th August, 2004, Prayas have reiterated their contentions regarding the regressiveness of GoM's decision, the adverse impacts of free power and the responsibility of the Commission in the light of EA, 2003 read as a whole. Prayas have urged as follows:

- (a) GoM and MSEB should show how the proposal satisfies the criteria under Section 61(b), (c), (h) and the objectives of EA, 2003; give evidence of the funds available with GoM to compensate MSEB taking into account the arrears subsidy commitment; set out the impact on MSEB's finances and operations and their ability to meet consumers' service expectations; provide details of subsidies payable and paid in the last five years and manner of payment;



and furnish information regarding arrears and recovery from agricultural consumers, as set out in their submission.

- (b) In any event, GoM should pay in advance and in cash (or by book adjustments of net MSEB payables to GoM, as per the Tariff Regulations) to compensate the loss of revenue to MSEB. As mentioned above, the loss of revenue to MSEB is not just on account of waiver of bills starting from 1st July, 2004, but MSEB would also lose due to non-recovery of arrears from agricultural consumers.
- (c) In addition to loss of revenue due to bill waivers, the Commission should direct GoM to compensate MSEB to the tune of, say, Rs 100 crores/ month upto the amount of agricultural arrears as interest free advance. As and when MSEB recovers these arrears, the same should be refunded to the GoM.
- (d) MSEB should urgently carry out the metering of all pumps and the cost of the same should be paid by GoM. Without such a process, the unaccountability of MSEB will continue.

17. In their submission dated 18th August, 2004, Mumbai Grahak Panchayat (MGP) have set down in writing their contentions at the hearing regarding the meaning of advance payment under Section 65 in the context of when the fixed charges apply. They have also reiterated that the compensation amount cannot be restricted only to the extent of the subsidy proposed, but has to include the effects on agricultural arrears (Rs 2200 crores), increased pumping resulting in further load shedding and loss of revenue from paying consumers, increase in T&D losses and a culture of non-payment. MGP have also pointed out that agricultural pumps elsewhere would also have to be covered. Therefore, MGP have prayed as follows:

- (a) The Commission should give 15 days notice asking persons (and MSEB) to file for compensation if they feel affected, and then determine the amount of compensation.
- (b) Prescribe the manner of payment such that it meets the requirement of payment in advance.
- (c) Inform MSEB that in case of any deviation in the manner of payment laid down, recovery would be as per the approved tariff.

18. In their submission dated 17th August, 2004, TBIA have stated that the entire revenue mechanism of MSEB and the Tariff Order dated 10th March, 2004 would be jeopardized on account of free supply to agricultural pumps. The compensation to the affected persons needs to be computed "based on the losses incurred by supply of millions of units on the cost of production, since the same has been accounted for while fixing total revenue generation in addition to FOCA charges. This has to be calculated along with various components to arrive at the amount of compensation to be paid to MSEB and MPECS." TBIA have also reiterated the other contentions made by them at the time of hearing.

19. In his further affidavit received on 23rd August, 2004, on behalf of GoM Shri R.N. Ambrat, Dy. Secretary has stated, inter alia, as follows:

- (i) *"On the basis of the opinion of Advocate General, I say that the EA, 2003 prescribes procedure for disconnection of electricity supply. Section 56 of the EA, 2003 enables the MSEB to disconnect the electricity supply in case of default in payment of bills. The relief provided by Section 65 operates only in case of advance payment. It is, therefore, clear that in the event the MSEB does not receive payment for energy supply and bill sent by it to a Consumer, it is within its right to disconnect electricity supply."*
- (ii) *"I say that Section 65 of the EA, 2003 enables the Government to grant subsidy to any consumer or class of consumers in the tariff determined by the State Commission. The tariff determined by the State Commission is in relation to the charges of the energy supplied to*



the Consumer. It may take into consideration indirect losses suffered by the MSEB. However, once the tariff determined or is under consideration of the Commission, the subsidy granted by the Govt. can only be in relation to the tariff. In that view of the matter, the Advocate General opined that indirect losses and culture of payment of dues as well as loss accrued thereby to MSEB need not be compensated by the Govt. while providing subsidy to the Consumers."

- (iii) *"I say (in view of the Cabinet decision) that the State Government has issued the Government Resolution for providing free electricity to the farmers subject to the approval of the Commission. The State Government has also taken a decision to provide the necessary amount to MSEB and Mula Pravara Society by way of subsidy for the quarter ending July to September 2004. I further state that the State Government will move the State Legislature during its coming Winter Session for providing necessary amount to be paid as subsidy to MSEB and Mula Pravara Society for implementing this decision."*
- (iv) *"I say that the other issues raised by the Deponents are peripheral and require some time to give detailed reply. However, so far the central issue of payment of subsidy to MSEB and Mula Pravara Society is concerned, the opinion of the Advocate General is clear and the commitment of the State Government is also made hereinabove."*

20. With the above affidavit, GoM have submitted a copy of Govt. Resolution (GR) dated 17th August, 2004. Giving reference of an earlier GR dated 21st February, 2004 regarding subsidy for the previous concessional tariff decided upon for the period from 1st December 2003 to 30th November, 2004, the GR states, inter alia, that GoM have decided to provide subsidy to compensate MSEB and MPECS for the revenue loss on account of the decision to fully subvent the agricultural tariff from 1st July, 2004, subject to the Commission's approval.

21. The Commission notes that Section 65 deals with compensation (in the present case to MSEB and MPECS) for any subsidy against the tariff determined in respect of any consumer or class of consumers, and reads as follows:

"If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, the State Government shall notwithstanding any direction which may be given under Section 108 pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government.

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by the State Commission shall be applicable from the date of issue of Orders by the Commission in this regard."

A fair reading of Section 65 makes it clear that it is limited in ambit, and that the compensation has to be equivalent to the extent to which the amount payable by the subsidized consumers is to be reduced as compared to the approved tariff. This is also the thrust of the advice of the Advocate General submitted by GoM. The wider ramifications of GoM's decision that might also impact on future tariff revisions are certainly a matter of serious concern which the Commission had also expressed in its Order in the case of the Krishi Sanjivani Yojana. However, in the present matter, the Commission is restricted to determining the manner in which the compensation is to be paid for the direct impact on MSEB and MPECS. Since the subsidy against tariff becomes operational only when the bills are actually raised and become due for payment by agricultural consumers (in this case for the first time only at the end of the 2nd quarter of 2004-05), the



compensation has to be paid prior to the raising of such bills to satisfy the requirement of payment in advance under Section 65. With regard to the principles governing tariff cited by Prayas, the Commission notes that the tariff remains as determined by the Commission, but the actual recovery is to be done net of the compensation paid.

22. The Commission has already passed several Orders after the coming into force of EA, 2003 on various GoM Applications for grant of subsidy against tariff to different categories of consumers of MSEB and MPECS. Thereafter, on 10th June, 2004, the Commission has notified the Regulations regarding the Terms and Conditions of tariff under the provisions of EA, 2003. Regulation 8 reads as follows:

"Grant of subsidies by the State Government --

8.1 *If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the Commission, the State Government shall pay in advance the amount to compensate the licensee/ person affected by the grant of subsidy in the following manner.*

8.2 *The amount of subsidy agreed to by the State Government may be provided in the form of grant or by book adjustment of net dues payable by the licensee to the State Government.*

8.3 *To the extent to which the subsidy is provided by book adjustment of various dues payable by the licensee to the State Government, such adjustment shall be done on the basis of cash in hand with the licensee and not on accrual basis in respect of dues to be collected by the licensee from consumers on behalf of the State Government, such as electricity duty:*

Provided that the total requirement shall be adjusted on this basis before the subsidy can be operationalised and reflected in the bills issued by the licensee to the eligible consumers.

8.4 *The subsidy shall be passed on to eligible consumers only in proportion to the extent to which the total requirement of the licensee is paid by the State Government by financial releases or by way of book adjustment:*

Provided that in case of shortfall in such adjustment and/or actual release of subsidy, either because of errors in estimation or because of the difference between earlier computations on accrual rather than cash basis, or any other reason, such shortfall, shall be shown clearly in the consumers' bill and shall be distributed on a pro rata basis between the concerned eligible consumers until such time as it is reduced or eliminated.

8.5 *The licensee shall clearly indicate in the consumer's bill (a) the tariff determined by the Commission; (b) the amount of State Government subsidy and the rate and period thereof; (c) the net amount payable."*

Thus, under the Regulations, the compensation can be provided by GoM either by adjustment of dues payable to GoM or by actual cash releases. In the case of adjustment, this has to be done on the basis of payments actually due (i.e., instalments of principle and interest due against loans from GoM and, in the case of Electricity Duty collected by MSEB, to the extent only of the actual amount so collected but yet to be remitted to GoM.) This has also been the thrust of the recent Orders of the Commission passed prior to the Tariff Regulations.

23. The Commission has noted the initial statements made by GoM regarding the quantum of budget provision made and additional provisions to be made by them. However, it seems that these budget provisions were intended to enable adjustment of loans, etc. repayable by GoM to MSEB, and



did not envisage net cash provisions. The Commission notes in this context GoM's subsequent affidavit received on 23rd August, 2004 and GR dated 17th August, 2004, which appear to envisage net cash payments as compensation to both MSEB and MPECS. Chairman, MSEB had stated without rebuttal at the hearing that not only are budget provisions inadequate to meet the requirements of compensation even for the 2nd quarter starting 1st July, 2004, but that there is in fact no balance of loans, etc. due for repayment by MSEB to GoM during this quarter. In any event, for the reasons cited above, Commission directs that the compensation would have to be paid in cash before bills are raised unless GoM can show that there is still scope for adjustment since payments from MSEB are due. Regulation 8.4 cited above already makes clear what is to be done if there is any shortfall against the actual requirement, viz. that subsidy against tariff will not be permitted to that extent.

24. In view of the above, GoM are directed to compensate MSEB and MPECS by net cash releases to the extent required for the 2nd quarter of 2004-05 well before raising of bills for that quarter. With regard to the subsequent period, GoM are free to approach the Commission when they are able to show that they fulfill the requirements of the Commission and of the Tariff Regulations for that period. While doing so, or before that time, GoM should deal on affidavit with those issues raised by the consumer representatives in their written submissions which have yet to be addressed, along with the detailed information asked for.

Sd/-
(Prmod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

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

