

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

World Trade Center, Centre No. 1, 13th Floor, Cuffe Parade, Mumbai – 400 005
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Case Nos. 26 of 2002

In the matter of
applications filed by (i) Electricity Consumers Association (ii) Smt Sunita Arun Karnik and
(iii) Bhandara Zilla Laghu Udyojak Sanstha with regard to recovery of cost of meters, security
deposit and converting LTPG to HT category,

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

ORDER

Dated – June 27, 2002

The Maharashtra Electricity Regulatory Commission (MERC), in exercise of the powers vested in it under Section 29 of the electricity Regulatory Commissions Act, 1998 and all other powers enabling it in this behalf, has, vide its Order dated January 10, 2002 in Case No.1 of 2001 determined the tariff for 2001-02 for supply of electricity after considering the proposal submitted by the Maharashtra State Electricity Board (MSEB).

2. The Maharashtra Electricity Regulatory Commission has received the following three applications in the matter of Recovery of (i) cost of Meters, (ii) Security Deposit / Additional Security Deposit and (iii) Service-Line Charges, and (iv) Converting LTPG consumers to HT consumers. The Commission has also received parawise remarks from the MSEB. The Chairman of the Commission observed that since most of the issues raised are of similar nature, the Commission decided to club the above applications together and deliver a common order.

S. No	Name of the consumer	Date of complaint	Nature of complaint	MSEB response No. & Date
01	Mrs Sunita Arun Karnik, Thane	6.12.2001	Recovery of Cost of Meters without replacing the meter and Security Deposits.	5128 dated 8 th Feb. 2002.
02	Electricity Consumers Association, Kanjurmarg, Mumbai	21.11.2001 29.11.2001	Recovery of Cost of Meters without replacing the meter, Service Line Charges, Converting LTPG to HT consumers	No.5130 dt 8.2.2002, No. 5129 dated 8.2.2002 and No.5340 dated 11.2.2002.]
03	Bhandara Zilla Laghu Udyojak Sanstha	30.11.2001	Conditions of Supply, Converting LTPG to HT [Commercial Circular No. 636	2919 dated 23.1.2002

3. A Hearing, in the matter of above three Applications was held on 14th March 2002. During the hearing, the Chief Engineer (Commercial), MSEB submitted that since the issues relate to the policy matters and both the Technical Directors are busy due to the State Assembly Session, today's hearing may please be adjourned for another two / three weeks. The Petitioners, though principally agreed to the MSEB's request for adjournment, raised apprehensions about the seriousness of the MSEB officials with regard to the implementation of the directives of the Commission. Therefore, they requested the Commission to give clear instructions not to insist on collection of Meter Cost, and the Security Deposit and, also refrain from disconnecting supply for non-payment of such charges, etc. The MSEB should release press advertisements through out the Maharashtra in all local and state-level newspapers in the matter of stoppage of MSEB Departmental Commercial Circular No.636 and meter rent till the Commission finally decides the matter.

4. The Commission, with the concurrence of the other contesting parties and consumer representative u/s 26 of the ERC Act, 1998, accepted the request of the MSEB subject to the condition that no further action will be initiated by the MSEB with these and similar cases [regard to the recovery of cost of meters, security deposit and converting LTPG to HT category which are not in tune with the Commission's directive] till the matter is finally decided by the Commission.

5. The Commission also directed the MSEB:

- (i) Publishing a State-wide advertisement by 15th March 2002, stopping the recovery of charges under circular 636 and meter rent, without causing any hardship whether financial or otherwise such as disconnection to the consumers, till such time the matter is finally heard before the Commission and a decision is delivered.
- (ii) To submit (a) the current status with respect to the Memorandum of Understanding signed by the Chief Secretary, GoM on behalf of the GoM and the MSEB with the Secretary, Ministry of Power, GoI on Power Sector Reform, and (b) the latest status with regard to Master Metering Plan during next hearing.

6. During the adjourned meeting held on 5th April 2002, Shri Deshmukh, representative of Electricity Consumers Association (ECA) submitted that he would like to place on record his submissions in the matters of (i) Service Line Charges, (ii) Excess Tariff charges levied on Low Tension consumers and (iii) Meter Cost.

Meter Cost / Meter Rent:

7. Shri Deshmukh brought to the notice of the Commission that though the Commission has abolished the collection of Meter Rent [para 32 / page 82-83 of Tariff Order 5th May 2000], the Bhandup zone of the MSEB has billed the amount of Rs.1000/- for cost of meter citing the approval of Commission. He also strongly refuted the response of the MSEB mentioned in its letter No.5130

dated 8.2.2002 [point (f) and (g)] and requested the Commission to ascertain (a) whether any direction or approval was given to change all meters, (b) who decides the mass meter change programme and (c) whether any authority is given to collect in advance the cost of meter in violation of the MERC order, without which the action on part of the Bhandup Chief Engineer is purely illegal. Shri Shirish Deshpande, appearing on behalf of Smt Karnik, submitted that the MSEB's misuse of the Commission approval and gross violation of the Commission's directive must be penalized.

8. On a question from the Commission, he submitted that *the Bhandup zone has replaced about 3,30,000 meters, some of which are new static meters, whereas some meters are repaired and replaced. There are cases, where no replacements have taken place at all. However, the local authority of the MSEB has collected huge amount on this account, without any directives either from the Board or from the Commission. Further, he submitted that the MSEB has not even provided any parameters or formulated a guideline, under which meters will be replaced. When the matter was taken up with the higher authorities at the HQ of the Board, the matter was reviewed and the programme of replacement of meters was withheld. However, the question is: what happened to the already collected amount and whether there is any plan to refund to those from whom the money has already been recovered? The MSEB is silent on these issues. He further pleaded the Commission to direct the Board to refund the entire amount with interest to the consumers.*

Ownership of the Meter:

9. Shri Shirish Deshpande on behalf of Smt Sunita Karnik submitted that while on one hand the meter cost is collected from the consumers, the ownership of the meter is still retained by the MSEB and also as per the terms and conditions, the Board is supposed to take periodical Operation and Maintenance (O & M) of the said meter. He drew attention of the Commission to Section 26 of the IE Act, 1910 wherein the Option is with the consumer to either bring his own meter or to opt for the Board's meter. He further pointed out the obvious contradiction in the MSEB's statement that "*if the consumer opts to bring his own meter, he will be responsible to maintain the same in good working condition*" [points (l) and (m) of the MSEB's response No. 5128 dated 8.2.2002].

10. The Grahak Panchayat, Pune at this point added that Section 26 of the IE Act, 1910 is very clear on charging of rent and schedule VI (IE Rule 24) is also underlining clearly the principles of recovery of cost only when it is incurred. Therefore, he mentioned that the MSEB's action to recover the cost as per geographical area without incurring such cost is patently illegal.

Service Line Charges

11. Shri Deshmukh of ECA further submitted that the Bhandup Zone had collected service line charges from each and every consumer as per the Commercial Circular No.631 dated 22.10.1999. If one consumer leaves the premises and another occupant takes over the same, the SLC charges are collected from the new entrant again, even though Board incurs no further expenditure for the same connection. Earlier, the Honourable Commission directed the MSEB that the Commercial Circulars, which are issued after the formation of the Commission, should be kept in abeyance. However, in spite of that the Board has preferred to levy SLC as per Commercial Circular No.631.

12. Shri Ravi Anand of ECA submitted that in case of building construction industry, arbitrary 15% supervision charges is being collected from the builder, which is without any justification as the MSEB also instructs the builder to provide for the material like cables, meters, wiring, laying of cables, etc., at his own cost. This is over and above the irrational estimates submitted by the MSEB local authorities themselves. Naturally the builder passes it over to the first occupant of the premises. When the completed premises are transferred to the buyer, the MSEB again charges SLC from the new buyer, resulting in two times collection of the SLC from the consumers.

13. He further submitted that the Board has started collecting SLC from all the consumer since 1986, first in the name of NRCC (non-refundable capital cost), which was changed to ORC (outright capital contribution) and now it is in the form of SLC. The MSEB resorts to collect exorbitant amount of money under the pretext of ORC without even having a legally valid Commercial Circular in this aspect. This is nothing but outright monopolistic high-handedness of the local MSEB authorities. The SLC is charged at the rate of Rs.1200/- per HP for L.T. industrial consumers. He further queried: who is responsible u/s 44 of the ERC Act, 1998, in case the subordinate officers of the MSEB does not obey the circulars issued by the higher authorities and who should be penalized under Section 41 of the ERC Act, 1998.

14. He further submitted that the SLC is for infrastructure development and the entire amount should be kept in a separate account and be used for the same. Instead, the MSEB is showing it as a revenue income and it is never known how the amount has been used i.e. under which accounting head and in which way.

15. They have further submitted that there is a clear violation of the orders of the higher authorities by the Chief Engineer of Bhandup Zone, who is liable for action under sections 44 [Punishment for non-compliance of orders or directions under the Act] and 45 [Punishment for non-compliance of directions given by a Commission] of the ERC Act, 1998.

Security Deposit:

16. Shri Shirish Deshpande on behalf of Smt. Sunita Karnik, submitted that the Board is collecting Security Deposit / Additional Security Deposit from the consumer in addition to Rs.1000/- towards cost of meter. He submitted that the additional security deposit is not to protect against deferred payment, which is in any way already included into the tariff setting design, but to ensure security of payment. Generally, the security deposit is collected towards as a security measure for non-payment of bills. He further submitted that even though many companies provide Revolving LCs to the MSEB, security deposits/additional security deposits for two months average bill amount or so were also collected from such industries.

Replies from the MSEB:

17. The MSEB through its Legal Counsel Ms Deepa Chawhan submitted that the MSEB had issued appropriate directives in respect of the Commission's Orders to all its 11 zones and 33 Circles through out the State for implementation, from time to time. When a particular officer is not obeying the directives, then appropriate administrative disciplinary action is initiated. In this particular instance of "Meter Cost Recovery", the Chief Engineer, who has now retired, at Bhandup zone was involved. Therefore, in the interest of natural justice, it is not proper to mention him when the concerned person himself is not present before the Commission.

18. In this particular case, the MSEB has now agreed to the Commission's suggestion to refund the security deposit / additional security deposit collected to the respective consumers. However, the Counsel requested the Commission not to insist on payment of interest on this account. The Counsel further submitted the Board may be permitted to refund the amount where-ever the meter is not replaced. The Counsel also submitted that the Board shall withdraw the bills, with an apology, already raised in this respect for which a common newspaper advertisement will be inserted in the widely circulated local paper for public information. The Board will also refund excess collection through its next bill.

19. On a query as to whether the MSEB is not responsible for the excesses committed by one of its employee, the legal counsel submitted that in the light of the appropriate directives from the higher authorities, the responsibility lies with the concerned officer for its implementation. The Counsel further submitted that charge sheets were issued to the concerned Officer and action taken as per service jurisprudence. She also submitted that Sections 44 and 45 of the ERC Act, 1998, need not be invoked in the matter on the MSEB who is a legal persona, in light of above actions. Therefore, notice may be served on the specific person under the principles of natural justice. On a question from the Commission, the Counsel submitted that the actual residential address, telephone numbers, etc., of the concerned retired Chief Engineer (Bhandup Zone) will be placed before the Commission for taking appropriate legal steps in the matter.

20. Regarding the points raised by Shri Ravi Anand on Collection of SLC Charges on the Buildings, the Counsel submitted that the matter will be addressed separately in writing on affidavit as this issue was not earlier raised by the applicant. On the question of ownership of the meter, the MSEB counsel submitted that she will reconcile the matter and take appropriate instructions from her client to submit before the Commission under affidavit. The Commission also directed the Counsel to state under affidavit that the installed static meters, which are more tamper-proof, are of appropriate technical standards to provide for different aspects of the tariff order (e.g. ToD tariff to consumers having monthly consumption of more than 300 units) within its technical life.

21. The Commission further observed that the issue of relative merits and demerits of both the time-tested electro-mechanical meter and the recently introduced static meters is very much relevant to be considered as it requires substantial investment by the Board, for which it has to be suitably provided through the tariff. Therefore, an imprudent investment in inappropriate technology shall not only go waste, but also will contribute to inefficient utilisation of resources.

Compliance on the part of the MSEB:

22. A hearing was again held on 13th May 2002 (15.00 hrs.) with regard to recovery of cost of meters, security deposit and converting LTPG to HT category.

- (i) During the hearing held on 13th May 2002, the Counsel for the MSEB stated that they are submitting their clarifications on affidavit. The circulars, bearing Nos. 486 dated 8.8.1991 and 487, issued were prior to the constitution of the Commission. The Counsel further submitted that the Commission in its order dated 10.1.2002 had permitted the Board to continue levying the SLC as per the guidelines prevailing on 5.8.1999.

- (ii) The circular No 631 dated 22.10.1999 is held in abeyance, as per the Commission's order. Regarding the refund of cost of meter, the amount has already been arranged to be refunded/adjusted in bill, and an advertisement to this effect is released in Dainik Lokmat and Dainik Sakal.
- (iii) Regarding the problems faced by builders and those in construction lines, where the SLC was charged twice and stated that the MSEB has not received any formal complaints as yet.
It is further submitted [para 5 of letter No.PR-3/Bhandup/MERC/19628 dated 16th May 2002] that *the Service Line Charges are recovered from the consumers for establishing / creating the infrastructure necessary for providing power supply to the consumers. These charges are payable by the consumers at the time of availing power supply, which are recovered in proportion to the load demanded by the consumer and accordingly, the infrastructure having sufficient capacity is created to cater the said load. Any enhancement in the demand (load) of the consumer naturally strains the infrastructure and it needs to be augmented to the extent of additional requirement of the consumer and for this purpose, the consumer has to pay the necessary additional service line charges for augmentation of infrastructure.*
- (iv) In respect of details of TOD meters, the Commission in its first tariff order had made TOD tariff compulsory for all HTP-I & HTP-II consumers. In its order dated 10.1.2002, the Commission made TOD tariff available on option for LTP-G consumers and non-domestic consumers (LD-2). To record time-zone wise consumption, meters with TOD tariff features must be installed, which is costlier than the normal static meter. Going by the financial position of the Board and while ensuring economical use of available resources, priority can be given to consumers having comparatively higher consumption. Thus the Board has installed TOD meters to HTP-I & HTP-II consumers and static TOD meters will be installed to remaining HT consumers. The Counsel also stated that for LTP-G General Motive Power consumers, the Board is gradually installing the LT CT operated static meters having TOD facility.
- (v) There is no demand from any of the utilities for LT single-phase meter with TOD record facility, and hence is not available in the Indian market. It has to be procured from the International market, which will be costlier. As the cost of the static meters is decreasing,

the Board may consider to install at a later stage, LT three phase whole current TOD meters & LT single phase TOD meters to consumers having consumption of more than 300 units per month.

(vi) Static meter being a new technology, its life has not been standardized, and as per oral enquiries with the manufactures, it is understood to have a lifespan of about 7 to 8 years. The Board has procured special type single-phase electromechanical meters having life of 20 to 25 years. The static meters as well as Electro-mechanical meters can be upgraded to TOD meters. The static meters are relatively more tamper proof and more accurate than Electro-mechanical meters. The Counsel mentioned that the Board has given a detailed presentation on 10th May 2002 on Metering and its plan before the Commission as part of compliance.

(vii) With reference to raising assessed bills, the Counsel further submitted that the Board is charging in an equitable manner and also cited Section 23 (3), 26(4) and 26(6) of the Indian Electricity Act 1910:

"In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer-

- (a) by the actual amount of energy so supplied, or*
- (b) by the electrical quantity contained in the supply, or*
- (c) by such other method as may be approved by the State Government".*

(viii) The Board has furnished the address and telephone number, vide para 21 of its affidavit, of Shri P.G. Muzumdar, Chief Engineer, who has retired from the Board's service. The Counsel for the MSEB stated that departmental enquiry has already been initiated and the matter comes under 'Service Jurisprudence'.

On a query from the Commission whether Section 44 and 45 of the ERC Act could be invoked in this instance, the Counsel for the MSEB cited Section 44 and 45 (1) of the ERC Act:

Section 44 ERC Act: *"Whoever fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes, or attempts to contravene or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to rupees one lakh or, with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to rupees four thousand for every day during which the failure continues after conviction of the first such offence".*

Section 45 (1) *"In case any complaint is filed before the Commission by any person or if the Commission is satisfied that any person has contravened any directions issued by the Commission under this act, rules or regulations made thereunder, the Commission may after giving such*

person an opportunity of being heard in the mater, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed rupees one lakh for each contravention and in case of a continuing failure with an additional penalty which may extend to rupees six thousand for every day during which the failure continues after contravention of the first such direction".

MSEB is not liable under Sections 44 & 45 and also stated that principles of natural justice ought to be followed, and that the vicarious liability cannot be invoked for contempt as it is not the case of willful disobedience.

- (ix) Regarding the ownership of meters the counsel submitted that according to the MSEB, the ownership still rests with the Board. The Counsel, MSEB-cited Section 26 of the Indian Electricity Act, 1910, which state *"In the absence of an agreement to the contrary the amount of energy supplied to a consumer ... that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (I)."* The Counsel referred to para 8 to para 11 of its affidavit and submitted that an option is available to the consumer either to purchase his own meter or to request the licensee to supply meter. Section 26 (3) casts a duty upon the consumer to keep the meter correct, if he has opted to purchase his own meter and denied that the Board has made any contradictory statement in its response dated 8.2.2002. If the meter withstands the tests, prescribed under the prevailing legal provisions as well as other tests, which may have been prescribed by the Board, the Board has no objection, if the consumer opts to purchase his own meter.

The Counsel further submitted that when the consumer pays the cost of the meter, the meter is procured by the Board and is maintained by the Board and whenever circumstances require (except in case of burnt meter), such a meter has to be replaced by the Board without recovery of any further amount from the consumer. Therefore, it will be reasonable and justifiable for the Board to retain the ownership even though the consumer pays for the cost of the meter. The Counsel further stated that they would abide by the law.

23. The representative of Smt Kanik stated the Commission has abolished the rent and has ordered to collect one time cost. If the ownership is with the consumer, then the responsibility

increases and meters have to be maintained by the consumer and cited Section 26(2). He also enquired about the safety, which is of paramount importance and ignorance at the level of consumers. He stated that the Commission's order may be reconsidered keeping in mind the consumer's interest and safety and also cited section 26 (3).

24. The Commission enquired whether there is sound case to review its order. The Commission observed that, if the consumer pays security deposit, towards the cost of meters, the meters will be maintained by the MSEB.

25. On the application of M/s Bhandara Zilla Laghu Udyojak Sanstha, Station Road, Bhandara in the matter of conversion of LTPG consumers into HTP consumers, the Commission observed that on a similar application in Case No.27 of 2001 of M/s Rani Sati Rice Mill, Gondia, has already been dealt and an order has been passed on April 03, 2002. Therefore, the Commission felt that there is no need to pass separate order in the matter.

26. The Commission after hearing the contesting parties, in the presence of consumer representatives under Section 26 of the ERC Act, 1998, directs that:

- (i) The MSEB shall withdraw the wrong energy bills, with an apology and also shall refund the excess collection of meter cost and security deposit through its next bill in all such cases wherever it has not been done yet.
- (ii) The MSEB shall refund the above said amount collected, with interest at the rate of 12% (twelve) per annum.
- (iii) If the meter cost is already collected but the faulty meters are not yet replaced, the MSEB shall replace such meters by new meters, after intimating the respective consumers, within three months period.
- (iv) If the old meters are replaced, with repaired meters, then the cost of the meters so replaced shall not be collected.
- (v) In case the meters are not replaced, but the bill is raised, and the bill is still pending, the amount will not be shown as arrears by the MSEB towards meter cost.
- (vi) The MSEB shall submit with respect to Bhandup Urban Zone the details of category-wise consumers who have paid meter cost and number of meter replaced as on 31st March 2002 and 31st May 2002.

- (vii) In case the additional security deposit is collected by the MSEB in violation of the Commission's order dated 10th January 2002, the same will be refunded with interest at the rate of 12% (twelve) per annum.
- (viii) Regarding the collection of SLC charges, the MSEB shall also observe the Honourable Mumbai High Court's directive dated 28th September 2001 "*pending the hearing and final disposal of the Appeals, the Appellant shall not further amend modify the existing terms and conditions of supply or commercial circulars issued prior to 5th August, 1999*" [MSEB's Appeal before the Honourable High Court, Mumbai, No.1 and 2 of 2001 on the MERC Case No.10 & 11 of 2001].
- (ix) The MSEB shall file to the Commission what kind of Security instrument including Letter of Credit / Bank Guarantee, etc., are acceptable to it and its impact on the working capital cost.
- (x) The MSEB shall submit (a) the current status with respect to the Memorandum of Understanding signed by the Chief Secretary, GoM on behalf of the GoM and the MSEB with the Secretary, Ministry of Power, GoI on Power Sector Reform as directed during the hearing held on March 14, 2002.
- (xi) The MSEB shall furnish to the Commission with regard to what action has been taken under Service Jurisprudence against the erring official, since retired.

Sd/-

(Dr Pramod Deo)
Member

Sd/-

(Jayant Deo)
Member

Sd/-

(P. Subrahmanyam)
Chairman, MERC

(Sanjay Kumar)
Secretary, MERC

Note:

Further to the Record of Proceedings and the MSEB's compliance submissions, a preliminary draft order is kept below for approval.

While approving the draft order the Commission may like to answer two issues

- (i) **Ownership of the meter**: under directive of the Commission and the existing legal provisions, the MSEB has withdrawn the meter rent. Reverting back to the "meter rent" regime, shall change the philosophy adopted by the Commission in its first tariff order. Doing so, will further require to answer the question: what happens to those consumers who have already paid the meter cost during this phase and whether such consumer have to start paying rent afresh,
- (ii) Whether the meter cost already collected by the MSEB can be treated as a "**Security Deposit for the meter**", so that the ownership and maintenance liability of the meter can be with the MSEB. The Board can pay suitable interest towards security deposit for meter.

Another important point is whether the Commission would like to serve a notice on the individual officer of the MSEB, since retired, for determining the liability under Sections 44 and 45 of the ERC Act, 1998.

(M.K. Kundu)
171.6.2002

Secretary, MERC

Member (Dr Deo)

Member (Shri Deo)

Chairman, MERC.