

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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CASE No. 14 of 2003

In the matter of

Compensation to M/s Sagar Rollings & Forgings for losses caused by
MSEB and related matters..

Shri Jayant Deo, Member

Dr Pramod Deo, Member

ORDER

Dated: 11th August, 2004

M/s Sagar Rollings & Forgings (SRF), District Kolhapur, through Shri Suresh Narayan Tendulkar, jointly with other Partners of the firm, have filed a Petition praying that the Commission:

- “ (a) Direct the respondents to pay compensation to the extent of Rs.70, 00,000 /- (Rs. Seventy Lakh) quantified under different ‘heads’, as per annexure “R” hereto- attached to the application.
- (b) Award interest on the above compensation till the date of payment.
- (c) Pass such further or other Order/s as it may deem fit and proper in the facts and circumstances of the Case.”

2. The Petition states that SRF are a small scale industry, viz. a rolling mill at Kagal, District Kolhapur. On 19.12.1985 the Maharashtra State Electricity Board (MSEB) sanctioned connected load of 450 KVA with maximum demand of 450 KVA at 11 KV supply. This sanction was subject, among other conditions, to power restrictions imposed by the Government of Maharashtra from time to time, and to SRF ensuring minimum power factor of 85 by installing capacitors the details of which were to be furnished and got approved. A consideration of Rs.1.00 lakh was paid in advance. An agreement with MSEB was entered into on 14.2.1986, and the mill was started on 7.1.1987 with an investment of Rs.1 crore. After being satisfied that all the conditions in the sanction letter were fulfilled, MSEB released 450 KVA HP load vide letter dated 19.1.1987.

3. The Petition states that, on 27.5.1987, SRF wrote to MSEB complaining that the power supply was erratic leading to inadequate temperatures in the furnaces, in turn leading to inability to heat steel. MSEB were also informed that the cost per day incurred on the factory, whether it is run or not, is Rs.9,000/- which cannot be recovered if the mill is not run. Again, on 30.12.1987, SRF wrote to MSEB complaining that their 11 KVA supply was interrupted six times on the previous day

without giving any reason, resulting in a loss of Rs.6,000/- on account of investment costs as also furnace oil and minimum light charges levied by MSEB.

4. The Petition states further that, on 2.4.1988, SRF wrote again to MSEB informing them that engineers from Kirloskar Electric Company, Bangalore had monitored the factory's operation for two days and opined that, instead of the required voltage of 410 Volts, it was getting less than 390 Volts. MSEB were also informed that the electric supply was not 11 KVA but 10.5 KVA, which affected the running of the Rolling Mill, and were requested to take corrective action.

5. According to the Petition, MSEB responded on 6.1.1989 offering to install another 11 KVA feeder if SRF were prepared to bear the cost. The cost was accordingly paid by SRF.

6. The Petition states that, on 30.10.1990, MSEB had got an agreement signed from SRF's Partners under the threat of disconnection. That agreement did not carry the date of its execution, its place of execution nor the name of the parties executing it. Further, MSEB wrote to SRF on 10.1.1991 sanctioning a new load of 180 KVA on certain conditions.

7. Thereafter, according to the Petition, on the basis of a circular supposedly in existence a year before the Agreement was signed on 13.10.1990. MSEB sought to levy punitive charges of Rs.52,047 in respect of SRF's electricity bills during the period from October 1988 to September, 1989. However, by its Order dated 24.8.1992, the Kolhapur District Consumer Disputes Redressal Forum allowed SRF's complaint challenging the levy of the punitive charges. Thus, MSEB were disallowed recovery of Rs.50,047. On 27.5.1993, SRF wrote again to MSEB reiterating their complaint.

8. The Petition states that, on 12.11.1993, an appeal was filed by MSEB to the State Consumer Disputes Redressal Commission against the Order of the District Forum, but it was dismissed on 12.11.1993.

9. The Petition states further that, by letter dated 18.11.1993, the Regional Level Committee for Rehabilitation of Sick Units, Government of Maharashtra, Pune declared SRF a sick unit, and directed that the nursing programme was to commence on 1.9.1993. The sickness certificate was valid upto 31.8.1996. MSEB, among others, were directed not to take any coercive action against SRF, having been declared sick. Nevertheless, on 22.7.1994, MSEB temporarily disconnected SRF's electric supply with effect from 13.7.1994, ostensibly for not paying its electricity bills. Finally, SRF requested MSEB on 6.9.1994 to permanently disconnect their supply.

10. The Petition states that MSEB wrote to SRF on 19.11.1994 demanding Rs.5,92,107/- and stating that a suit for recovery of punitive charges had been filed in 1993. SRF replied to the letter, contesting it on the grounds mentioned therein.

11. The Petition states that Shri Suresh N. Tendulkar, as one of SRF's Partners, approached the State Commission, Maharashtra under the Consumer Protection Act (CPA), seeking compensation for the loss incurred by SRF due to the erratic and inadequate power supply by MSEB, and MSEB filed a reply denying all the allegations. Moreover, despite the stipulation in the sickness certificate that no coercive action be taken, MSEB filed a Suit No. 817 of 1995 in the Civil Court, Kolhapur, for the recovery of Rs.5,50,000/- being the alleged amount of arrears of electricity bills, deducting the amount of Rs.60,000/- of security deposit.

12. According to the Petition, on 5.12.1995 Shri H.V. Mate, Chartered Engineer, submitted a report on the reasons for losses incurred by SRF. He stated in his report that the loss suffered by SRF was due to frequent power interruption leading to losses due to lower capacity utilisation, idle

manpower and machinery, loss of raw materials due to half processed materials being wasted, cancellation of orders because of delay, loss of goodwill, increased consumption of furnace oil because of re-heating of raw material, and loss of fixed charges paid to MSEB to the tune of Rs.2000/- per day.

13. As regards the case filed before the State Consumer Disputes Redressal Commission, Maharashtra, the Commission by its Order dated 12.5.1996 directed SRF to approach the National Consumer Disputes Redressal Commission, New Delhi. Accordingly, on behalf of SRF an application was filed before the National Commission (196 of 1996) praying for compensation of Rs.60 lakhs quantified under different 'heads', and also for interest on such compensation. However, the National Commission held that the application involved many facts which could not be decided without recording evidence, and that it could best be tried by the Civil Court, relying upon the judgment of the Supreme Court in the case of Synco vs. State Bank of Bikaner & Jaipur and Ors. Reported in (2002) 2 SC Cases, p.1. It further observed that the application's dismissal would not come in the way of SRF approaching the Civil Court or any other forum for the reliefs claimed, and that the time taken before the National Commission would be excluded for the purpose of computing limitation.

14. Accordingly, the present Petition has been filed under the Maharashtra Electricity Regulatory Commission's Conduct of Business Regulations, 1999 (as an interested/affected party) on the following among other grounds:

- (a) That MSEB have breached the Agreement with SRF and the sickness certificate
- (b) That there were frequent interruptions in electric supply leading to inadequate temperatures in SRF's furnaces, leading to wastage of raw material, furnace oil and manpower.
- (c) That the breach of the agreement by MSEB led to loss of business and profits as well as goodwill for SRF. SRF lost many orders as a result.
- (d) That MSEB illegally terminated supply to SRF's factory, thereby causing a complete breakdown in their business.
- (e) That the breach of the agreement has been proved by the opinion of the engineers from Kirloskar Electric Company, Bangalore as well as that of the Chartered Engineer, Shri Mate.

15. In their reply dated 2.9.2003, MSEB have contended that the Petition praying for compensation for the alleged deficiency in services is not maintainable under the provisions of the Electricity Regulatory Commissions (ERC) Act, 1998. MSEB have also denied the allegations and contentions raised in the Petition, and stated that they would file a further reply on the merits of the matter if the Commission admitted the Petition.

16. MSEB's Reply states that SRF had approached the adjudicating Authorities under the provisions of the Consumer Protection Act in respect of their grievances. However, the National Consumer Disputes Redressal Commission, vide its Order dated 26.11.2002, directed the Petitioners to approach the Civil Courts, particularly since the case would entail leading of detailed evidence. According to MSEB, Sections 22 and Section 29 of the ERC Act do not encompass the nature of the claims raised in the present Petition and, as already held by the National Consumer Disputes Redressal Commission, would have to be adjudicated by the Civil Courts. This decision of the National Commission has been passed after hearing both the parties and consideration of the matter in question. MSEB have reiterated that, under such circumstances, the Petition is not maintainable.

17. The Commission constituted a Bench consisting of two Members (Shri Jayant Deo and Dr Pramod Deo) to hear and decide the admission of the Petition, and the admissibility hearing was accordingly held on 12.11.2003, at which Shri N. P. Gandhi, Counsel for SRF, also submitted their Rejoinder, briefly rebutting MSEB's contentions regarding the import of the National Commission's Order and the maintainability of the Petition, and pointing out that MSEB had not replied to SRF's substantive submissions.

18. SRF Counsel also reiterated the sequence of event and the contentions contained in their Petition (and set out in the foregoing paragraphs).

19. With regard to admissibility, Counsel for SRF cited the Order of the National Consumer Disputes Redressal Forum as under:

"We, therefore, dismiss this complaint. But that will not certainly come in the way of the complainants in approaching the Civil Court or any other forum for the relief's claimed."

To a query by the Commission, SRF Counsel submitted that the Commission was competent to entertain the Petition keeping in view Regulation 95 of the MERC (Conduct of Business) Regulations, 1999, which provided that:

"Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission."

Counsel for SRF submitted that if the Commission comes to the conclusion that it is just and necessary in this case to meet the ends of justice, then it can pass the necessary orders. While conceding that he could not cite any specific provision under the ERC Act, the Commission is an expert body concerned with electricity laws and the only forum for regulating the electricity sector, and has powers to call for and consider evidence. As regards the Commission's query as to the statutory provision which empowers it to grant compensation for non-supply of electricity or for non-performance of a contract, Counsel for SRF drew attention to Section 57 and 58 of the Electricity Act (EA), 2003 which has now come into force. The Commission noted, however, that these provisions essentially require the Commission to first notify the Standards of Performance of licensees through Regulations, which have not yet been finalised. During the hearing, the Commission noted that a mechanism for redressal of consumer grievances and the setting up of Forums would be put in place shortly under Sections 42(5) and (6) of EA, 2003.

20. Counsel for SRF also submitted that, although the Civil Courts may also have jurisdiction, SRF would have to pay heavy Court/Stamp fees on their claim of Rs.70 lakhs if they approach them. Even if SRF succeeded, they would have to bear these costs.

21. Ms Deepa Chawan, Counsel for MSEB, while accepting the need to address the grievances of consumers adequately, submitted that, under any law, it has to be shown that default has occurred and that is the only reason due to which the consumer suffered. Even under the CPA, there are certain guidelines. She submitted that MSEB had filed a detailed reply to the National Commission, and that MSEB had stated that they would do so in the present case also if it is admitted. For the claimed damages of Rs.70 lakh, evidence will have to be led by SRF to prove the damages, and also by MSEB to rebut them. She submitted that SRF's grievance is that there were general interruptions of power in the entire area. The Commission observed that SRF's grievance was that, as interruptions occurred and power supply was of poor quality, SRF approached MSEB and were told that, upon payment, a special feeder would be set up separately for them. Counsel for MSEB submitted that the amount of

Rs.52,000/- which SRF had paid was for enhancement of their contract demand. However, SRF did not pay for a separate feeder and, therefore, MSEB did not provide it. The representative of SRF submitted that MSEB had taken Rs.1.07 lakh from them subsequently and granted additional power. This was also referred to by the National Commission.

22. The Commission observed that it is the responsibility of MSEB to take all measures to meet the consumer's demand properly. Alternatively, SRF should have been told at the very outset that MSEB would not be in a position to supply the power demanded at SRF's border location at Kagal. If a separate feeder was necessary, MSEB should have set it up much earlier. Even though the standard agreement provides for matters beyond their control, MSEB have to take precautions for those which are within their control.

23. Counsel for MSEB submitted that they are not disputing that there were certain interruptions in power supply, partly due to a stormy situation in that area at that point of time and MSEB had made all efforts to resume power. There were difficulties on the part of both parties.

24. Under their letter dated 6.12.2003, SRF sent to the Commission settlement terms proposed to MSEB. Thereafter, under their letter dated 13.2.2004, SRF have stated that they had yet to receive MSEB's response. In the meantime, MSEB have filed a case in the Kolhapur Court, and SRF have stated that "the case dates are posted for above settlement proposal for last two months".

25. The Commission notes that the compensation claimed through the Petition arises out of causes of action pertaining to periods several years before the constitution of the Commission, and even the coming into force of the ERC Act. The Commission is not the appropriate forum for such claims, which can be dealt with by the Civil Courts or elsewhere. Some such issues relating to the period after its constitution have also been dealt with by the Commission in its Order dated 1.8.2003 in Case Nos. 28, 29 and 30 of 2002. The Commission notes that, under Regulations notified on 10.12.2003, it has now set out a mechanism for redressal of consumer grievances. With regard to MSEB's statutory responsibilities, the Commission also notes that it has recently thrown open to the public for comments draft Regulations containing a Supply Code under Section 50 and laying down Standards of Performance for licensees under Section 57 of EA, 2003 which make crystal clear the responsibilities of MSEB. While declining to admit the present Petition, the Commission still expects MSEB to make serious efforts to resolve the basic grievances of the Petitioner jointly with them.

(Jayant Deo)
Member

(Dr Pramod Deo)
Member

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