

**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.**

**Dr Pramod Deo, Member
Shri A. Velayutham, Member**

ORDER

Dated: 23rd September, 2004

In its Order dated 23rd August, 2004 (paras 23 and 24), the Commission had held and directed as follows:

- "23.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."

Thereafter, the Maharashtra State Electricity Board (MSEB) approached the Commission on affidavit dated 14th September, 2004 stating that, subsequent to their earlier submissions and the Commission's Order, the Govt. of Maharashtra (GoM) had issued a Resolution (G.R.) dated 8th September, 2004 stating that Rs 411.62 crores were due from MSEB to GoM on account of deduction made by Govt. of India (GoI) from the Block Loan towards dues from MSEB to certain Central Public Sector Undertakings (CPSUs). Upon verification from their Accounts, MSEB have found this to be correct. Thus, the estimated requirement of Rs 395 crores (plus Rs 7 .5 crores for



MPECS) due from GoM to MSEB as compensation towards 100% subsidy to agricultural consumers in the 2nd quarter of the current financial year can be adjusted against the amount of Rs 411.62 crores payable by MSEB to GoM as above. Therefore, MSEB have sought permission to issue zero energy bills to agricultural consumers for the period from 1st July, 2004 to 30th September, 2004.

2. In its Notice for hearing, citing paras 23 and 24 of its Order and MSEB's latest affidavit, the Commission asked MSEB to furnish on affidavit details so as to show that the net amount (i.e. taking all dues on either side into consideration) payable by MSEB to GoM upto the 2nd Quarter of 2004-05 leave sufficient balance for GoM to make compensation by way of adjustment rather than by net cash releases. GoM were also directed to furnish their say on affidavit, along with a copy of the G.R. referred to by MSEB.

3. In response, MSEB filed an affidavit dated 20th September, 2004 stating as follows:

"(1) the position of receivables and payables was reconciled between the Govt. of Maharashtra (GOM) (Energy and Finance Departments) and the MSEB.

(2) During reconciliation it was pointed out by GoM that there are certain items where final decision is yet to be taken by GoM, while on some other items the methodology of calculations etc. needs to be looked into. The position, as it emerges out of a quick review is as under:

	<u>Rs. Crores</u>
Amount receivable from GOM as on 31.03.2004	481.68...(1)
Less: Amount payable on account of deductions made by GOI towards block loan.	411.62
Net amount receivable from GOM as on 31.3.2004	70.06
 <u>Amount Receivable from GoM (2004-05) upto 30.09.2004</u>	
Bond budgetary support for DPC	27.03
Core Plan	33.52
Compensation for Ag. Tariff (April - June '04)	13.64
Compensation for Ag. Tariff (July - Sept '04)	395.00
Compensation for Power loom	128.00
Elect. Works under for National Games, Pune (Old arrears)	2.58
Reimbursement towards payment made to advisory committee.	0.18

	599.95 [A]
 <u>Amount payable to GoM</u>	
Interest on GoM loan	172.99
Repayment of GoM Loan	86.14
Guarantee Fees	41.62
Elect. Duty (on collection basis)	294.48
Lease rent for hydro projects (approx. Rs 250 crores Per Year)	125.00(2)
Installments of CPSU dues	43.29

	763.52 [B]

Net amount payable to GoM [B] - [A] =	163.57 Crs.



Notes:

1. Includes amount of (i) Rs 221.92 crore towards Mula Pravara and (ii) Rs 268.82 crore as an amount of difference in Electricity Duty, on which discussions are going on with GoM.
2. The issue of lease rent payable for hydro power stations is not yet settled. This will have to be worked out on the basis of guidelines issued by CERC and will have to be finally approved by the Commission. As per preliminary calculations, it will be approximately Rs 250 crore per annum.

(3)This position is likely to change depending upon the final decision taken on issues presently unresolved".

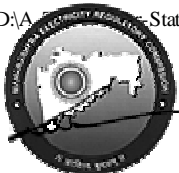
4. GoM also filed a written submission dated 21st September, 2004 stating that, in accordance with the Commission's Order dated 23rd August, 2004, GoM had issued orders the next day releasing Rs 395 crores and Rs 7.50 crores to MSEB and MPECS respectively. However, MSEB have been purchasing power, coal and other supplies from various CPSUs. Certain outstanding amounts used to be directly paid to these CPSUs by the GoI. The GoI in turn recovered this amount from various amounts sanctioned by GoI to GoM in different years starting from 1990-91. Over the years, an amount of Rs 411.62 crores has been deducted on account of such recoveries by GoI from amounts receivable from the GoM. MSEB have to repay this amount to GoM. Thus, GoM have taken a decision on 8th September, 2004 to release an amount of Rs 395 crores and Rs 7.50 crores to MSEB and MPECS respectively for the second quarter by book adjustment. GoM also pointed out that MSEB had agreed, vide their affidavit dated 14th September, 2004, to the above adjustment.

5. With regard to the gross dues of Rs 481.68 crores claimed by MSEB as due as on 31st March, 2004, GoM have stated that it includes major items which are not yet resolved, as follows:

"MSEB has claimed a refund of differential amount between electricity duty on billed basis and collection basis for the period from 1990-91 to 2002-03 amounting to Rs 268.82 crores. As electricity duty is the first charge on the amounts recovered from consumers end, the claim would have to be examined in this light. The matter is under consideration...MSEB has also claimed compensation of losses due to viable tariff to Mula Pravara Elec. Co.op. Society of Rs 221.92 crores. This matter is under examination..... In any case, the said Rs 481.68 crores and other receivable claim by the MSEB includes several items, the computations of which will need to be checked and audited if necessary."

6. GoM have further stated that Rs 274.49 crores have accrued as interest on the amount of Rs 411.62 crores directly deducted by GoI. This also has to be paid by MSEB to GoM. Moreover, the lease rent of hydro projects needs to be refixed, the lease agreements having already expired. On commercial principles, the Irrigation Department has worked it out as Rs 381 crores, but the matter is still under GoM's consideration as per the Commission's suggestion. Thus, GoM have argued that the amount due from MSEB is much higher than what is required as payment of compensation for the 100% subsidy against tariff decided by GoM for agricultural consumers in the current 2nd quarter.

7. The matter was heard on 21st September, 2004. At the outset, referring to GoM's submission dated 21st September, 2004, Shri B.P. Pandey, Principal Secretary (Energy) submitted that Rs 411.62 crores had been deducted directly by GoI from amounts receivable by GoM on account of recoveries due to CPSUs from MSEB accumulated over the past few years. Thus, correspondingly, this additional amount is payable by MSEB to GoM. Accordingly, the G.R. dated 8th September, 2004 has been issued. Thus, the amount of compensation for the 2nd quarter of 2004-05 against 100% tariff subsidy would be adjusted against that amount.



8. The Commission observed that the notice for hearing had asked for details as to the net amount, if any, payable by MSEB to GoM. MSEB have given the figures, but GoM's written submission does not give the full details. Shri Vinayak Rao, Accounts Member, MSEB, referring to MSEB's affidavit dated 20th September, 2004, submitted that a gross amount of Rs 481.68 crores was due from GoM as on 31st March, 2004. When reconciliation was done taking into account Rs 411.62 crores as above, the net amount receivable from GoM stood at Rs 70.06 crores. MSEB's affidavit then sets out the amounts receivable from GoM upto 30th September, 2004. He pointed out that these amounts were the same as presented earlier by MSEB, but they take into account the period upto September, 2004 instead of the full financial year. Explaining some of the receivables, Shri Rao stated that Rs 13.64 crores shown as compensation for the earlier subsidy against agricultural tariff in the 1st quarter was only the balance remaining, more than Rs 200 crores having been adjusted already. Rs 128 crores shown as subsidy for powerlooms is half of the amount required for the full year. In this manner, the total gross amount receivable from GoM upto 30th September, 2004 is Rs 599.95 crores.

9. As regards gross amounts payable by MSEB to GoM, Shri Rao drew attention to the explanatory note to the lease rent for hydro projects estimated by MSEB at approx. Rs 125 crores, being half of Rs 250 crores for the whole year. However, GoM have a different view on this, and submitted that the revised lease rent has not yet been settled. An exercise has been taken up on the basis of CERC guidelines, and the figure cited is a preliminary estimate. In sum, after netting the total amount of Rs 763.52 crores estimated as payable to GoM upto 30th September, 2004, MSEB still have to pay Rs 163.57 crores even after adjusting Rs 395 crores for 100% agricultural subsidy in the current quarter.

10. The Commission observed that the net amount of Rs 163.57 crores would be further reduced to the extent of net receivables of Rs 70.06 crores from GoM as on 31st March, 2004. The Commission queried as to the impact of the adjustments on the cash flow position of MSEB, and noted that some amounts are still unresolved and under discussion. If adjustment is made, there will be no actual receipts and this would, therefore, have a cash flow impact. With regard to Commission's query regarding MPECS, Shri Jayant Kawale, Chairman, MSEB submitted that even if the claim is accepted then, as noted in MSEB's affidavit, Rs 221.92 crore would still have to be accounted for and has been included as part of the amount receivable from GoM as on 31st March, 2004. The Commission observed that through the adjustment mechanism, in practice, MSEB would have to forego cash receipts of this amount. Shri Rao agreed that there would not be net cash receipts. However, in any case, GoM would have deducted/ adjusted Rs 411.62 crores of CPSU dues recovered by GoI from GoM's account. Drawing attention to the Regulations, which cited Electricity Duty as an example, Commission observed that the adjustments should be on a cash and not on accrual basis.

11. Dr. Ashok Pendse of Mumbai Grahak Panchayat pointed out that, in the space of three weeks, MSEB have filed two contrary affidavits. In the first (in August, 2004), it had been stated that a net additional amount of Rs 400 crores was required from GoM. However, in the latest affidavit, the position is completely reversed. The question arises as to which of these affidavits is to be relied upon. Further, MSEB's latest affidavit indicates that many items are under consideration or discussion. Therefore, these figures should be examined by a third party such as the Accountant General wherever there is ambiguity, so that the final figures can be properly arrived at.

12. Shri Shantanu Dixit of Prayas referred to their earlier affidavit in which Prayas had asked that GoM and MSEB should provide supporting material in respect of dues payable on either side. Some details were given by MSEB on 23rd August, 2004, and an affidavit was also filed by GoM. The submissions were made on affidavit and the Commission relied on them and passed Orders on the



same day. Shri Dixit also pointed out that GoM's submission dated 21st September, 2004 was not notarized and not on affidavit as had been required by the Commission. While conceding that the Commission had not always insisted on affidavits, he submitted that, considering the contradictory stands taken in the various submissions, it may not be proper to move ahead without an affidavit from GoM. Dr. Pendse added that, as he had pointed out at the last hearing, the required fees of Rs 500/- have also not been paid by GoM. Shri Dixit also submitted that it was upto GoM to show that there was scope for adjustment, and queried the propriety of MSEB initiating the matter. The Commission observed that, since the Principal Secretary (Energy) was personally present, the written submission filed by GoM today can be treated as a statement which can be taken into account as evidence by the Commission.

13. Without prejudice to Prayas' right to take other recourse to the Commission's earlier Order, Shri Dixit contended that MSEB's affidavit does not give the full picture. He drew attention to para 6 of the Commission's Order dated 18th May, 2004 in respect of tariff subsidy to agricultural and powerloom consumers which reads as follows:

"MSEB have further submitted in their reply that, in pursuance of directives issued by GoM under letter dated 20th October, 2003, instructions were issued to their field offices to accept part payment of energy bills from agricultural and Powerloom consumers at the subsidized tariff applicable during 2002-03, and the balance amount of the respective energy bills is being treated as arrears. MSEB have urged the Commission to ask GoM to immediately compensate them (either by way of adjustment against dues payable by MSEB or in cash) for the loss of liquidity to MSEB on this account."

Shri Dixit queried as to whether the new figures presented by MSEB take the above into account. He also asked whether the receivables from GoM on account of Krishi Sanjivani Yojana had been included, and pointed out that it had been mentioned during those proceedings that the likely amount for the Scheme would be Rs 1500 crores. Further, in July 2004, a scheme similar to Krishi Sanjivani Yojana had been announced for powerlooms and municipal drinking water supply schemes, and submitted that all these must be taken into account.

14. Shri Dixit also referred to GoM's recent G.R. regarding subsidy of Rs 72 crores per annum to MPECS to cover the Bulk Supply Tariff, plus Rs 4 crores for capital expenditure. The G.R. also includes treatment of arrears from MPECS to MSEB as a regulatory asset in MSEB's books of account. This does not seem to be reflected in the figures which have now been submitted.

15. Shri Dixit submitted that various questions arise in respect of other items payable/ receivables in MSEB's affidavit, and queried as to when the Bond budgetary support for Dabhol Power Company (Rs 27 crores) was due. As far as the lease rent for hydro projects is concerned, he pointed out that it is Rs 85 crores per annum at present, as against Rs 250 crores taken into account by MSEB. This higher amount, however, can only be considered when the lease rent is formally revised. Taking into account all these points, Dr. Pendse stated that the consumer representatives could list the issues and figures to be clarified and on which CAG's vetting/ audit is required.

16. Shri Dixit pointed out further that, in its Order dated 23rd August, 2004, the Commission had stated that various issues raised at that time by the consumer representatives would have to be addressed by GoM / MSEB before approaching the Commission again, which has not been done. Considering the complete reversal of stand by MSEB in a period of three weeks, he queried as to what would happen if after another two weeks MSEB discover that there are in fact some other large dues payable by GoM to them. Therefore, the figures that have been presented require to be substantiated.



17. Dr S.L. Patil of Thane Belapur Industries Association submitted that GoM's decision vitiates the very basis of the Commission's tariff Order. Merely paying compensation to the extent of the agricultural bills will not amount to full compensation since the entire tariff structure is affected and the consequences are 'paid' for by many other consumers. Because of the wider implication of GoM's decision, the actual difference between receipts and payments will be much higher. The fear that there will be a huge increase in electricity demand is in the process of being confirmed. The losses ascribed to T&D would also increase. He agreed with the concerns expressed by other consumer representatives and submitted that the figures needed to be examined, particularly in view of the grave implications.

18. Shri Pandey, Principal Secretary (Energy) stated that, with regard to the procedure, GoM's submission had been made in the format of an affidavit but, because of paucity of time, could not be sworn or notarized in the prescribed manner, and that a formal affidavit would be filed the next day. (The Commission notes that, accordingly, a formal affidavit was submitted on 22nd September, 2004.) With regard to Prayas' implicit suggestion that the Commission relied only on the affidavits filed while passing its Order of 23rd August, 2004, he submitted that it was a speaking Order which showed that the Commission had applied its mind.

19. Shri Pandey submitted that the affidavits filed on the earlier occasion contain statements which were made on the basis of matters as they were known at that time. Thereafter, GoM and MSEB had gone into them in further detail so that a full picture could emerge. With regard to the amount of Rs 411.62 crores, Shri Pandey submitted that discussions had been going on with regard to how to deal with and account for the amount that had been deducted directly.

20. With regard to the amount of Rs 481.68 crores shown by MSEB as outstanding from GoM as on 31st March, 2004, Shri Pandey stated that this includes an amount of Rs 221.92 crores towards MPECS arrears. One decision with regard to MPECS had already been taken in terms of provision of subsidy under the recent G.R., i.e. Rs 72 crores plus Rs 4 crores. Shri Pandey also submitted that the net balance arrived at was on the basis of figures which were not fully audited, but the Commission had been approached again in view of the approaching billing period for the current quarter. However, it had been decided in principle that the position would be audited. As far as the other issues raised by consumer representatives earlier are concerned, these would be addressed as and when the Commission is approached for a dispensation for subsequent quarters, as per the stipulation in the Order dated 23rd August, 2004.

21. Shri Kawale, Chairman, MSEB reiterated that the figures tally with those presented earlier, but on a half year basis, i.e. upto 30th September, 2004, which explains the apparent discrepancies. He also submitted that the current receivables and loan accounts are separate and MSEB did not want them to get mixed up for adjustments because of cash flow implications. The option was to treat the amount of Rs 411.62 crores as loan or to adjust it. GoM chose the latter alternative, which was their prerogative. There was an enabling provision in the Budget to treat it as a loan, but GoM decided on the adjustment route.

22. Prayas and MGP sought details of the budgetary papers and the G.R. in order to examine this position, and mentioned that this seems to amount to a change in the status mandated by the Legislature. Shri Pandey pointed out that the G.R. dated 8th September, 2004 accompanied GoM's submission. Shri Kawale explained that MSEB had represented that this amount be treated as loan, and the Legislature had made an enabling provision by way of approval to a Supplementary Demand. However, exercising their prerogative, GoM decided on an alternative route. The Commission directed that the relevant Supplementary Demand papers should be furnished to the consumer representatives and the Commission.



23. With regard to the Krishi Sanjivani Yojana, Shri Kawale submitted that it related to arrears and was adjusted against loan outstanding from MSEB to GoM, thus retiring high interest debt to that extent. This amounted to Rs 518 crores as on 31st March, 2004. Taking credit of this amount, MSEB calculated the interest and adjusted it. However, it may be noted that not all the concerned consumers participated in the Krishi Sanjivani Yojana. Shri Dixit of Prayas contended that, even so, adjustment would have to be made for the entire scheme as envisaged, and then the position looked at the end of the Scheme. The relevant Order of the Commission mentions that the financial requirement for the entire Scheme was Rs 1500 crores. Shri Kawale pointed out that the loan amount was sufficient to cover that. In the case of similar Schemes in respect of powerlooms and water supply schemes, the amount required to be adjusted will be known only at their close. Shri Dixit stated that this was precisely his point.

24. With regard to the hydro projects lease rent, Shri Kawale mentioned that the Commission had stated that this was a matter to be decided between GoM and MSEB. MSEB had made some preliminary computations on the basis of CERC guidelines and had taken the matter up with GoM along with other unresolved issues.

25. To Commission's observation regarding the matter of creation of regulatory asset for treatment of arrears of MPECS, Shri Kawale clarified that there were, in fact, 3 types of arrears, viz. prior to Commission's establishment; after its establishment, and also arrears arising from the difference between the guidelines issued regarding 'Viable Tariff' and actual payments made by MPECS. MSEB had proposed a certain dispensation regarding each of these categories, which was under discussion with GoM. The Commission observed that this amount cannot be treated as a regulatory asset without Commission's consideration and approval. Interest is also not reflected. Shri Kawale submitted that only Rs 221 crores have been shown as being to GoM account because of the decision of 1999 regarding 'Viable Tariff'. However, the arrears after the Commission came into existence would not be GoM's liability. The Commission observed that, in any case, the submissions from MPECS and MSEB on that G.R. regarding subsidy and regulatory asset have been asked for separately.

26. With regard to validation and audit of all figures, Shri Kawale submitted that, for a complete exercise, we will have to go back to 1971, and on one matter or the other, the reconciliation process would keep continuing.

27. To Commission's query with regard to the note in MSEB's latest affidavit regarding Rs 268 crores as differences in Electricity Duty, which are said to be under discussion with GoM, Shri Kawale clarified that GoM have argued that, under the statute, Electricity Duty is a first charge. Thus, the issue is whether, if recovery is effected subsequently by MSEB, Electricity Duty is to be taken entirely as a first charge or can be appropriated. This is being examined in consultation with GoM.

28. Shri Dixit of Prayas stated that at least on the figures which are under discussion and on which audited statements cannot be given, the outcome should be awaited or compensation to be made against tariff subsidy should be in the form of net cash releases. The Commission asked MSEB to file explanatory notes on each of the figures, with a copy to the consumer representatives.

29. In their subsequent communication dated 22nd September, 2004, Prayas have contended that G.R. dated 8th September, 2004 clarifies that the decision/ adjustment is under the jurisdiction and authority of the AG and has to be adjusted by him. Prayas have stated further that:



"In light of these facts, we bring to the notice of Commission, MSEB and GoM that even assuming (without admitting) that there is scope for book adjustments, as per the provisions of the Electricity Act, 2003, the compensation has to be paid in advance, i.e. in this case book adjustment has to be completed before bills are raised. Unless this is ensured, it would be a clear violation of the provisions of EA, 2004, and will attract other relevant provisions of the Act. Further, we urge that before zero agricultural bills for the second quarter are raised, MSEB must submit to the Commission and consumer representatives a documentary evidence of receipt of compensation for the same."

30. In the light of the submissions made by GoM and MSEB and the points raised by the consumer representatives, the Commission needs to examine whether the net amount (i.e. taking all dues on either side into consideration) payable by MSEB to GoM up to the 2nd Quarter of 2004-05 leave sufficient balance for GoM to make compensation by way of book adjustment rather than by net cash releases. Such an examination is warranted in view of Section 65 of the Electricity Act, 2003 and Regulation 8 of the MERC (Terms and Conditions of Tariff) Regulations 2004, which read, inter alia, as follows:

"Section 65. Provision of subsidy by State Government: - 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..."

"MERC (Terms and Conditions of Tariff) Regulations, 2004

8. *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 an 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."



It is, therefore, a necessary condition that book adjustment towards payment of compensation for the grant of subsidy is made beforehand, just as cash payments have to be made in advance. The question of whether or not the statement of payments to be made by MSEB to GoM and vice-versa contains payments which will be effected before bills for the 2nd quarter of 2004-05 are issued to agriculturists is crucial to decide this matter. The statement furnished by MSEB in their affidavit is reproduced in paragraph 3 above. From the footnotes to that statement, it is seen that the following payments are under discussion or examination:

- (i) Rs 221.92 crore towards Mula Pravara
- (ii) Rs 268.82 crore as an amount of difference in Electricity Duty
- (iii) Rs 125 crore of lease rent payable for hydro power stations for six months (as against Rs. 85 crore for the full year prevailing so far).

Unless GoM firm up the quantum of these payments by issuing formal orders before electricity bills are issued to agricultural consumers, the scheme of book adjustment proposed by MSEB and GoM cannot be made effective. The amounts that are not finalized as well as adjusted through such formal orders before that date cannot be taken into account while determining the net amount available for adjustment, and GoM shall make cash payments to the extent of the consequent shortfall.

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Member



(A.M. Khan)
Secretary, MERC

