

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

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

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

ORDER

Dated: 6th January, 2005

In their original Petition dated 11th August, 2004, seeking approval under Section 65 of the Electricity Act (EA) 2003, Govt. of Maharashtra (GoM) in the Industries, Energy & Labour Department had stated their intention to provide subsidy against tariff so as to make free power available to agricultural consumers of the Maharashtra State Electricity Board (MSEB) and Mula Pravara Electric Co-operative Society (MPECS) from the 2nd Quarter of the financial year 2004-05 onwards, along with estimated revenue loss and the position of provisions for compensation by adjustment of dues for the purpose upto 31st March, 2005. Under its Orders dated 23rd August, 2004 and 23rd September, 2004, the Commission had, inter-alia, directed that the amount of compensation be paid in cash, or by way of adjustment of net dues payable by MSEB only if certain stipulations in the Order dated 23rd September, 2004 were fulfilled, against 100% subsidy for free power for the 2nd Quarter of 2004-05. With regard to the subsequent period, GoM could approach the Commission again when they were able to show that they fulfilled the requirements of the Order and of the Tariff Regulations for that period.

2. In its Order dated 23.8.2004, the Commission had stated (para 24) that

"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".

Citing the Commission's directions, GoM have approached the Commission under affidavit dated 27th December, 2004 seeking directions regarding the compensation payable for the 3rd and 4th Quarters of 2004-05. GoM's affidavit states that Rs 403 crores had been released to MSEB and MPECS to compensate the revenue loss due to free power supply to agricultural pumps for the 2nd Quarter (July



to September, 2004) vide Government Resolution (G.R.) dated 1st October, 2004, following which MSEB had issued zero energy bills to agricultural consumers. Subsequently, GoM have submitted a copy of G.R. dated 3rd January, 2005 under which a budgetary provision of Rs 1212 crores has been made by supplementary demand, of which Rs 407 crores have been sanctioned for release to compensate MSEB and MPECS for the revenue loss on this account for the 3rd Quarter (October to December 2004) (Rs 13 crores due to MPECS to be adjusted by MSEB against the former's current bill).

3. Seeking to address some of the issues raised earlier by the authorized consumer representatives regarding compensation for non-payment of arrears by agricultural consumers, metering programme and the position of receivables and payables as between GoM and MSEB, GoM's affidavit states that MSEB are free to disconnect power to agricultural pumps due to non payment of arrears and that, therefore, the question of compensating MSEB for such non-payment does not arise. MSEB are implementing the metering programme of agricultural pumps under the APDRP scheme and with the help of REC loan. GoM have also furnished tabular statements of the receivables and payables for the years 2002-03 to 2004-05. The statements indicate that, according to GoM, the net amount payable by GoM to MSEB amounts to Rs 528.90 crores (Rs 3031.87 crores payable minus Rs 2502.97 crores receivable). GoM have submitted further that certain other payment issues between GoM and MSEB which had been raised on the last occasion, e.g. Rs 221.92 crores towards MPECS, Rs 268.82 crores being the difference in Electricity Duty, and lease rent of hydro projects of Rs 250 crores are still under examination. GoM have stated that, in any case, the subsidy compensation would be given in cash rather than by way of book adjustment of dues, and hence these issues are not relevant for the purpose of their present Application.

4. MSEB's Reply dated 29th December, 2004, confirms that GoM have compensated them by net cash releases to the extent required for the 2nd Quarter of 2004-05. MSEB have urged that GoM be directed to pay MSEB by net cash releases to the extent required for the 3rd and 4th Quarters and to compensate MSEB directly in accordance with the provisions of Section 65 of the Electricity Act (EA), 2003. MSEB have mentioned that they have separately submitted their views on free electricity to agricultural consumers to GoM through Board Resolutions dated 29th July, 2004.

5. At the hearing on 4th January, 2005, Shri B.P. Pandey, Principal Secretary (Energy), GoM submitted that a G.R. has been issued on 3rd January, 2005 for payment of Rs 407 crores in cash to compensate for the revenue loss due to free power for the 3rd Quarter (Oct. to Dec 2004). A provision of Rs 1212 crore has been made by supplementary demand, which would enable GoM to finance the compensation required to be paid until the end of the current financial year. He submitted that the Commission had earlier directed that payment for the 2nd Quarter should be made in advance before bills are issued, and that this had been done. Hence, GoM were now approaching the Commission for the subsequent 3rd Quarter. He reiterated GoM's response to the points raised by the consumer representatives as contained in the affidavit dated 27th December, 2004, and submitted that, with these comments and the action to release funds taken so far, the Commission's earlier directions had been complied with, and that the present Application be allowed.

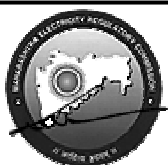


6. Dr. Ashok Pendse of Mumbai Grahak Panchayat (MGP) circulated a tabular statement using figures from the receivables and payables statement furnished by GoM purporting to show that, in fact, in 2004-05, an amount of Rs 812 crores would be payable by GoM to MSEB which has not been accounted for. Admittedly, this figure has been arrived at on certain assumptions and inferences. Whether it is higher or lower needs to be worked out, but the point is that there are large amounts which do not seem to have been fully considered. They include, for example, additional amounts for compensation against the regular tariff for agricultural and power loom consumers, street light arrears, difference in Electricity Duty, arrears of Govt. offices, etc. In addition to these amounts, Dr. Pendse pointed out that MSEB have been drawing attention to the loss of revenue on account of free power in separate proceedings regarding load shedding. These amounts have not been taken into account by GoM in their provisioning. As the affected party under Section 65, it was expected that MSEB would quantify the impact and seek additional compensation to that extent.

7. Dr. Pendse drew attention to para 10 of the Commission's Order dated 23rd August, 2004, which cites Chairman, MSEB's statement that the payment of compensation becomes due at the end of the quarter and not at the beginning, because recovery from agricultural consumers of MSEB starts only then. He also referred to the Commission's statement at para 21 to the effect that compensation has to be paid prior to the raising of bills to satisfy the requirement of payment in advance under Section 65. This was in the context of his contention in the earlier proceedings and reiterated now, viz. that the amount payable by GoM becomes due before the end of the relevant Quarter and not merely before bills are raised, in the present case by 31st December, 2004. Dr. Pendse submitted that, on the same logic, if for whatever reason MSEB does not raise a bill on a consumer for, say, a couple of months, it would be tenable for a consumer to argue that until such time payment does not become due, which cannot be the case. By issuing a G.R. on 3rd January, 2005 for the 3rd Quarter, which is already over, GoM's compensation does not qualify as advance payment as envisaged under Section 65.

8. Drawing attention to the Commission's directions at para 24 of the Order dated 23rd August, 2004 (cited above) that GoM should deal with the issues raised by the consumer representatives while approaching it under Section 65 for the subsequent Quarters, Dr. Pendse submitted that many of these points have not been fully addressed. Some information and responses had been given with their latest affidavit, but copies were not provided to MGP on time by GoM and had to be obtained from the Commission. In these circumstances, it was difficult to comment and analyze GoM's statements more fully.

9. Shri Shantanu Dixit of Prayas also pointed out that MSEB and GoM had not responded to many of the points raised by the consumer representatives earlier. Referring to the previous proceedings, he also pointed out that the first hearing on GoM's original Application was held on 16th August, 2004, and GoM issued a G.R. regarding payments and provisions the next day without awaiting the Commission's decision. This was not an isolated instance, and such actions immediately affected the general payment culture upon announcement even before they are operationalised. Shri Dixit urged that such GRs should not be issued without the Commission's prior approval.



10. Supporting MGP's contention regarding what constitutes advance payment as per Section 65, Shri Dixit submitted that GoM should have approached the Commission much earlier and obtained Orders before 31st December, 2004, and also agreed with Dr. Pendse's analogy of consumers being liable to pay even if bills are not raised in time.

11. Referring to GoM's version of receivables and payables, Shri Dixit pointed out that on the last occasion different figures were presented at different times, and the position had not been reconciled. This time, only GoM's version has been presented. He argued that if certain additional amounts were payable by GoM to MSEB (which were even higher than admitted as inferred by Dr. Pendse), then it is not tenable for GoM to treat them in isolation and provide funds only for the 100% subsidy requirement for the 3rd Quarter. Shri Dixit also drew attention to press reports to the effect that, while releasing the funds as compensation for the 2nd Quarter to MSEB, GoM had obtained premature repayment of loans from MSEB, thus vitiating the whole purpose of the compensation. (Subsequently, under letter dated 5.1.2005, Prayas have reiterated the points raised by them at the hearing.)

12. Shri S.V. Kulkarni, Managing Director, MPECS submitted that their earlier stand remained unchanged. For the 2nd Quarter, around Rs 8 crores had been sanctioned but had yet to be adjusted against their dues by MSEB. He had, however, yet to see the latest G.R. dated 3rd January, 2005.

13. Shri B.P. Pandey, Principal Secretary (Energy) reiterated the contents of G.R. dated 3rd January, 2005 in which a budgetary provision of Rs 1212 crores had been made for the period from July 2004 onwards, of which Rs 407 crores had been sanctioned for release in cash as compensation for providing free power to agricultural consumers for the 3rd Quarter of 2004-05. Thus, issues relating to net payables and receivables, manner and extent of book adjustment of net dues, etc. were not relevant since GoM were compensating MSEB entirely by cash releases. He submitted that, in its earlier Orders, the Commission had already ruled on what constitutes advance payment, viz. that such payment must be made before bills are raised. Thus, that matter cannot be revisited except by way of appeal. As far as receivables and payables were concerned, Shri Jayant Kawale, Chairman, MSEB submitted that MSEB's version presented on the last occasion remains unchanged. With regard to the amounts over which there was disagreement, GoM have set up a Committee with MSEB for reconciliation, which would take some time. Principal Secretary (Energy) submitted that, in any case, the matter of reconciliation should not be linked with the present Application since compensation was being paid in cash and not by way of adjustment of dues.

14. Chairman, MSEB confirmed that MSEB had prematurely repaid loan of around Rs 200 crores to GoM which bore a high rate of interest of 14.25%, and thus retired some costly debt. In fact, MSEB had been consistently asking GoM to restructure the debt.



15. To Commission's query regarding the computation of actual subsidy requirement if agricultural consumption had increased as a result of free power, Principal Secretary (Energy) stated that GoM's provision has been made entirely on the basis of the estimates conveyed to them by MSEB. Chairman, MSEB submitted that it is debatable whether the recent increase in agricultural consumption has resulted from free power or for other reasons such as good rainfall, etc. and no firm conclusions could be drawn. He pointed out, however, that this did not affect billing which would remain unchanged considering that a large proportion is on a fixed HP basis.

16. The Commission notes that it has already set out the template for the payment of subsidy compensation by GoM in respect of subsidy for 'free power' extensively in its Orders dated 23rd August, 2004 and 23rd September, 2004 relating to the 2nd Quarter of 2004-05 considering the provisions of Section 65 of EA, 2003 and the Commission's Tariff Regulations. Except to the extent that GoM have now, at the outset, stated that they would be making compensation in cash and not by way of book adjustment of dues, the earlier rulings of the Commission apply to the present Application. The Commission also notes that G.R. dated 3rd January, 2005 provides for release of Rs 407 crores, which is the estimated requirement to compensate MSEB and MPECS for the direct revenue loss on this account in respect of the 3rd Quarter (October to December 2004). Thus, the Commission hereby approves GoM's Application for cash payment as subsidy compensation for the 3rd Quarter. The amount of Rs 407 crores being based on estimates provided to GoM, MSEB and MPECS must act in accordance with Regulation 8.4 of the MERC (Terms and Conditions of Tariff) Regulations, 2004, which makes clear how any shortfall in compensation against the actual requirement is to be treated, viz. that subsidy against tariff will not be permitted to that extent.

17. The Commission notes that some of the issues raised by consumer representatives earlier are yet to be addressed fully by GoM. Some of these relate to the position of receivables and payables on either side and their reconciliation, and would have been immediately relevant had GoM pursued their original plea to be allowed to make compensation by way of adjustment of dues, which is not the case. Some other issues relate to compliances and other actions that were expected of MSEB, and the consumer representatives have now also raised the issue of premature repayment of high interest loans to GoM, arguing that this had partly offset the payment made in cash against subsidy for the 2nd Quarter and could impact on MSEB's ability to service consumers efficiently. The Commission has already held in its previous Orders that the scope of Section 65 is limited. It is, however, expected that GoM would also be concerned about any action which might adversely affect MSEB's capabilities. Many other issues raised by consumer representatives earlier fall within the Commission's advisory jurisdiction under Section 86(2), and the Commission intends to address them accordingly either through separate proceedings or during the next tariff determination process. Similarly, some other matters, including the impact of premature retirement of loans, would also be examined in the ARR and tariff proceedings.



18. On the earlier occasion, the consumer representatives had raised the issue of what constitutes advance payment under Section 65, and they have reiterated their arguments during these proceedings. At para 21 of its Order dated 23rd August, 2004, the Commission had ruled that

"since the subsidy against tariff becomes operational only when the bills are actually raised and becomes due for payment by agricultural consumers the compensation has to be paid prior to the raising of such bills to satisfy the requirement of payment in advance under Section 65."

Citing the analogy of the liability of consumers to pay in time even bills which are raised after inordinate delay, MGP and Prayas are essentially saying that this would allow MSEB, for instance, to defer raising of bills until such time as GoM are ready to provide compensation. The Commission is of the view that a balance has to be struck keeping in view the requirement that the object and intention behind Section 65 be met. This would be satisfied if the bills are raised within a reasonable period of time keeping in view the Licensees' commercial interest, which would dictate raising of bills sooner rather than later and cannot be open-ended. The Commission understands that bills for agricultural consumers are normally sent by MSEB around one or two weeks after the close of the relevant Quarter. Thus, it cannot be said that the GoM's sanction for release of the amount for the 3rd Quarter contained in G.R. dated 3rd January, 2005 militates against the letter or spirit of Section 65.

The Commission disposes of GoM's Application dated 27th December, 2004 with the above directions and observations.

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Member



(A.M. Khan)
Secretary, MERC.