

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 28 of 2003

In the matter of
Change of category from Sizing to Powerloom and related matters.

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

ORDER

Dated: 10th August, 2004

In his Petition dated 7th August, 2003, seeking a change in category for his unit from sizing to powerloom and related matters, Shri Husain Abdul Hamid has stated that he had a 3-phase connection at his work-shed in Islampura Ward, Malegaon, Dist. Nashik for the purposes of industrial use, i.e. sizing process. However, due to various difficulties, he had sought a change in category from sizing to Powerloom, and applied to the local office of the Maharashtra State Electricity Board (MSEB) on 22nd December, 2000, and by two communications in February, 2001. After closing down his sizing activity, he made several visits to the MSEB office, without result. Thereafter, he informed the concerned MSEB officials that he had installed machinery and 11 power looms requiring 11.25 HP load. Shri Hamid has stated that, because of labour and financial difficulties, he was working in only a single shift at different times. Taking this into account and attaching further details, he has also complained about the billing. Shri Hamid has submitted that there are no arrears against his 3-phase connection for sizing and has also been paying bills regularly since January, 2002.

2. Shri Hamid has made various allegations against the concerned MSEB Sub-Engineer, whom he claims visited his work-shed several times and asked for a bribe. The Petition states that, upto August 2002, his sanctioned load was 10 HP but he had applied to MSEB for an increase. He was given a firm quotation, complied with all the formalities and actually increased the load, for which he had to pay the Sub-Engineer. Thereafter, in October 2002, money was also demanded from him for rectification of his bill considering the fact that his unit was closed since August 2002. The Petition alleges that demands for money continued thereafter, and a tout was also sent to him. He has also cited various false reports regarding faulty meter, etc. given by the Sub-Engineer to MSEB. Finally, in the absence of any other alternative and under duress, on 27th February, 2003, Shri Hamid paid an excess bill of more than Rs 47,000/-. Thereafter, in July, 2003, after more demands for money, his meter was removed.

3. In response to a letter of the Commission asking him to clarify the provisions of the Electricity Act (EA), 2003 under which he has approached the Commission, under his letter dated 15th September, 2003 Shri Hamid reiterated that he had applied without result to MSEB for a change of category from sizing process for which he was on LT (LTPG tariff) to powerloom. Shri Hamid submitted that his Petition falls within the purview of Section 43 of EA, 2003, under which MSEB have to supply electricity within a month of application. His case does not fall under Section 43(2) (where the time limit can be extended) because there is already an existing supply line and he had only asked for change of category. However, since MSEB had not done so within the stipulated period, they were liable to punishment under Section 43(3). Shri Hamid submitted further that his electricity supply was temporarily disconnected from August, 2002, after which he had deposited around Rs 47,000/- in February, 2003 in good faith.

4. Shri Hamid followed up with a letter dated 29th September, 2003. Referring to his Petition, where he had stated that MSEB had removed his meter on 16th July, 2003, Shri Hamid stated that, on 19th August, 2003, the service wire was also removed and, although there was no visit from the Flying Squad, a false FIR alleging theft was lodged with the police even though his unit was closed since August, 2002. The news of the alleged theft case was also reported in the press. The police complaint alleges theft to the extent of 2.47 lakh units.

5. Under another letter dated 6th October, 2003, Shri Hamid has provided further details of the sequence in his case with copies of challenged bills/ receipts and meter readings. Another letter followed on 21st October, 2003 containing further details and allegations.

6. In their Reply dated 5th November, 2003, MSEB have stated that the Petitioner had an industrial connection for undertaking sizing work. He applied for change of category from sizing to powerloom vide the three applications cited by him. MSEB had informed him under letter dated 8th February, 2001 that a No Objection Certificate from the Municipal Council (being the local authority) was needed for the required load and purpose. The necessary certificate from the Textile Commissioner was also not given. MSEB have pointed out that, as admitted by Shri Hamid, he had started the powerloom activity even before the transfer was sanctioned. The required documents have not been furnished to MSEB so far.

7. MSEB's Reply also states that Shri Hamid has been in arrears of bills in respect of his electric connection, and had denied his contention of regular payment or that the production had stopped from August, 2002. MSEB have stated that Shri Hamid never raised any dispute about the bills for the period after August 2002 till 28th February, 2003. For this period, the arrears increased from around Rs 52,000/- to Rs 1.04 lakhs. In fact, in his complaint dated 7th January, 2003, Shri Hamid had only said that the bill for the said period has not been received. MSEB have stated further that site inspection revealed that electricity had been consumed during that period and the production process was on. Shri Hamid was also given copies of all the relevant documents. However, as recorded by the concerned Dy. Exe. Engineer under his letter dated 24th September, 2003, Shri Hamid failed to make even any provisional payment.

8. In their Reply, MSEB have stated that, due to the mounting arrears, supply was temporarily disconnected on 16th July, 2003. However, during the spot inspection on 26th August, 2003, it was found that, in spite of temporary disconnection, Shri Hamid had illegally reconnected it. On 2nd August, 2003, a notice in respect of proposed permanent disconnection was given and the electric supply was permanently disconnected on 26th August, 2003. On 26th September, 2003, the Area Engineer filed a FIR for theft.

9. As regards the allegations made regarding certain officials, an inquiry was conducted by the Exe.Engineer (UCR Malegaon) and revealed that the allegations were false and motivated.

10. MSEB have further stated that Shri Hamid had been using electric connection contrary to the authorization which was given, inasmuch as he had increased the load to 26 HP.

11. According to MSEB's Reply, Shri Hamid submitted a complaint disputing the arrears on 28th February, 2003. He failed to make payments even after temporary disconnection on 16th July, 2003. The Exe. Engineer (UCR Malegaon) has also observed that the meter was unauthorizedly handled, thereby stopping it, as per the spot verification report of October 2002 and January 2003. MSEB have, therefore, sought that the Petition be summarily dismissed.

12. In his Rejoinder submitted at the hearing held on 10th December, 2003, Shri Hamid has stated that, with his application for change of category, he had attached a NoC dated 3rd February, 2001 from the Municipal Council in compliance of MSEB's letter dated 2nd February, 2001. (The NOC states that it is for a "Tarashan machine", and for 5 HP). MSEB's letter seeking this compliance had not asked for a certificate from the Textile Commissioner, and is also enclosed. This requirement was brought up for the first time in MSEB's reply.

13. Shri Hamid reiterated that no arrears were outstanding and the production process stopped in August 2002. However, MSEB illegally issued bills for the subsequent period till March 2003 for alleged arrears of Rs 52,000/- which went up to Rs 1.04 lakhs. These amounts were subsequently corrected to around Rs 47,000/-. The corrected bill was prepared as per the flat rate applicable per powerloom for 26 looms for 7 months, a copy of which has been attached. In his Rejoinder, Shri Hamid states that the Sub-Engineer compelled him to pay this above amount, saying that it was necessary so that the abnormal and faulty bill could be revised and the category changed. Therefore, Shri Hamid did so in good faith and was given a receipt dated 27th February, 2003.

14. Shri Hamid has stated that the allegation that the work site revealed that electricity was consumed during this period and that the production process was on is false and concocted. The spot verification report dated 17th August, 2002 and 8th January, 2003 which have been enclosed, themselves reveal that the powerlooms were not functioning and no production process was in progress, and comments that the seals were intact. Shri Hamid denies the various other statements made by MSEB in their Reply and reiterates his earlier contentions and allegations. He has stated that, when he refused to meet the further demands of the Sub-Engineer, a false FIR was filed claiming theft to the extent of Rs 11.16 lakhs for the period of 3 years from August 2000 to July 2003, which is clearly in contradiction of MSEB's own spot verification reports. Moreover, the meter reader visits the premises each month.

15. In respect of the increase in load to 19 HP and then to 26 HP, Shri Hamid states that MSEB have suppressed the fact that they are collecting the overload penalty from him. He has sought that reconnection of electricity supply and change of category from sizing to powerloom unit be directed by the Commission, and that the bills raised after August 2002 and upto 26th August, 2003 be invalidated and only minimum demand charge levied since his unit was closed during that period.

16. At the hearing held on 10th December, 2003 Shri N.A. Lodhi, Counsel for Shri Hamid submitted that the Petitioner originally obtained a connection for his sizing unit. A sizing unit is a part and parcel of a powerloom unit, and not a different unit. Thereafter, he applied for a change of category since he stopped undertaking the sizing process in view of various difficulties. He

reiterated the sequence of events contained in the Petition and subsequent submissions. He submitted that it is only now, through MSEB's Reply, that Shri Hamid has been informed of the requirement of a registration certificate from the Textile Commissioner. While agreeing with the Commission that he has to fulfill whatever requirements there might be, Counsel pointed out that, when he applied, he was asked to produce only a certificate from the Municipal Council, which he did. If MSEB required some other certificate, it would also be produced but MSEB could not disconnect Shri Hamid or not allow him to run his powerloom business, which is his source of livelihood.

17. To a query by the Commission, Shri Gaurang Joshi, Counsel for MSEB stated that Shri Hamid had applied for a higher connected load of 19 HP and was asked to produce various NOCs. MSEB have been asking for this on instructions from the State Govt. and it has been part of MSEB's procedures since 1998 in respect of powerlooms for which a Circular had been issued. He conceded that all the bills had been paid for the sizing unit, but there had been default after the change over to powerloom unauthorizedly. The Commission observed that MSEB have continued to charge Shri Hamid at the higher LTPG tariff rather than the tariff for powerloom. MSEB's case seems to be that Shri Hamid did apply, but has not given certain documents, or the documents given by him are not the correct one. MSEB Counsel submitted that Shri Hamid had also given certain documents which cannot be co-related to his premises.

18. The Commission observed that new Regulations have been put in place today with regard to the mechanism for settlement of grievances such as this. The Commission also cited the definition of 'grievance' contained in the Regulations. MSEB should endeavour to resolve the position with regard to disconnection and change of category and verification of arrears of the Petitioner through their internal redressal mechanism within one month. Compliance should also be filed. Counsel for MSEB stated that MSEB would approach the Petitioner accordingly, but pointed out that a case of theft has also been registered. Moreover, there is an Order of the Commission (Case No. 24 of 2001) that no change of category can be effected without the Commission's approval.

19. Referring to the above directions given by the Commission at the hearing, CE (Comm), MSEB wrote to the Petitioner on 29th December, 2003 to approach the concerned Suptd. Engineer, Nashik Circle with a view to redressal of his grievances. However, under letter dated 29th March, 2004 (with copy endorsed to the Commission), the Suptd. Engineer referred to Shri Hamid's grievance application and visits to the concerned office, intimated Petitioner's Counsel that the NOC from Malegaon Municipal Council is for 'Tarashan' machinery and not for powerloom. Various other averments have also been made, including a defence of the police case filed since the spot verification report "shows reverse trend". The NOC from the Textile Commissioner, and also from the Municipal authorities clearly stating the activity as powerloom and the specific location have also been asked for.

20. In view of the continuing impasse in this case, the Commission disposes of the Petition with the following directions:

- (i) While noting that when the Petitioner first applied for change of category, he was only asked for clearance from the Municipal Council, but no certificate from the Textile Commissioner or other authorities concerned with powerlooms, MSEB should communicate their final decision with regard to change of category upon receipt of the apparently wanting certificates or documents already communicated to him.

- (ii) While the Commission would not like to interfere in matters where theft is alleged and cases have been lodged which are governed by separate provisions of EA, 2003, the contents of the spot verification reports furnished by MSEB to the Petitioner and which have been filed by him indicate that it is necessary for MSEB to review the basis on which the theft charge has been lodged with the police authorities, and to withdraw it if considered appropriate after such review.
- (iii) As far as the claims for payment/ arrears for the period from August, 2002 onwards is concerned, it is admitted by MSEB that the alleged consumption has been in respect of powerlooms. Hence, the claim should provisionally be on the basis of the powerloom tariff.

21. MSEB should file the detailed status of compliance of the above directions, with a copy to the Petitioner, within one month. In case the Petitioner is dis-satisfied with MSEB's final decision, to the extent that they fall within the ambit of the term 'grievance' as defined in the Regulations, he also has recourse to the Consumer Grievance Redressal Forum set up for the Nashik Zone of MSEB.

22. With regard to MSEB's contention that, in Case No. 24 of 2001 concerning the MIDC Murbad Industrial Area, the Commission had restricted change of category without its prior approval, the Commission notes that a Clarificatory Order has been issued on 19th July, 2004 which deals with such cases.

Sd/-
(Jayant Deo)
Member

Sd/-
(Prmod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

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