

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**CASE No. 9 of 2004**

**In the matter of  
Non Release of Additional Load by MSEB to M/s. Transparent Energy Systems Pvt. Ltd.**

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

**ORDER**

Dated: 7<sup>th</sup> December, 2004

By the present Petition filed on 9<sup>th</sup> June 2004 against the Maharashtra State Electricity Board (MSEB), the Petitioner, M/s. Transparent Energy Systems Pvt. Ltd. (TES), has prayed for the following reliefs:

- a) *MSEB be directed to release the additional load immediately;*
- b) *Suitable penalty be imposed on MSEB for breach of obligation under Section 43 of the Electricity Act, 2003 (EA 2003); and*
- c) *Suitable penalty be also imposed on MSEB for non-compliance of the directions given by the Commission in its Tariff Order dated 5-5-2000 regarding release of connections within a stipulated period.*

2. The Petitioner states that TES is a small scale unit engaged in manufacture of Boilers, Co-Generation Systems and Heat Recovery Systems at its factory at Village Shindewadi, Taluka Khandala, District Satara. TES is an existing consumer of MSEB bearing Consumer No. 203750637271 and the present matter relates to the sanction of additional load for connection. According to the Petition, prior to 1996, TES had obtained a HT connection from MSEB. During 1996, its HT supply was converted into LT supply by MSEB on its request, with sanctioned load of 65 HP. Thereafter, on 8<sup>th</sup> August, 2000, an application was made to MSEB for sanction of additional load of 35 HP, thereby raising the total load to 100 HP. MSEB, vide their letter dated 18<sup>th</sup> September, 2000 advised TES to comply with certain requirements by submitting certain documents and papers. TES claims that it had already submitted several documents, and other documents are already with MSEB since TES is an existing consumer. Nevertheless, MSEB have not yet sanctioned and released the additional load applied for by TES.

3. In their Reply dated 8<sup>th</sup> July 2004, MSEB stated that the HT connection was originally in the name of Vapor Energy Machines Private Limited ("Vapor"). Upon its request, MSEB converted its HT connection into LT connection with a sanctioned load of 65 HP on 22<sup>nd</sup> February 1996. It is further stated by MSEB in its Reply that, at the request of Vapor, the name of the consumer was changed on 23<sup>rd</sup> June, 2000 from Vapor to TES. It is also confirmed by MSEB that TES applied for sanction of additional load of 35 HP on 8<sup>th</sup> August 2000, and MSEB had advised TES to submit certain documents vide letters dated 18<sup>th</sup> September 2000 and 16<sup>th</sup>



August 2003. However, MSEB have stated in their Reply that TES has not fully complied with the requirements communicated by them. Therefore, the application of TES for sanction of additional load could not be proceeded with, although the technical feasibility was kept ready.

4. In their Reply, MSEB have further stated that, during the visit of their Flying Squad to the factory premises on 5<sup>th</sup> March 2003, MSEB found that TES is utilizing load in excess of that sanctioned, i.e. 104.2 HP as against sanctioned load of 65 HP. Accordingly, MSEB levied penalty for unauthorized use of additional load, and TES challenged such charging of penalty and filed a suit in the Civil Court against MSEB.

5. MSEB have stated that they have on as many as six occasions advised TES to meet their officials for discussing and sorting out the issues under dispute but TES did not attend. To date, TES had not complied with the requirements of MSEB for sanction of additional load, but has been utilizing load in excess of sanctioned load from the date of its application, thereby depriving MSEB of revenue.

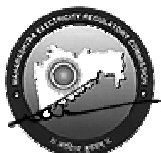
6. In their Reply MSEB have stated that, considering the facts of the present case, and considering that they have always shown willingness for sanction of HT connection to TES as per the rules considering their actual load found and subject to TES complying with the requirements, no penalty is warranted for alleged breach of provisions of Section 43 of EA, 2003 or for non-compliance of directives of the Commission.

7. At the hearing held on 20<sup>th</sup> October, 2004, Shri S.C. Karandikar, Counsel for the Petitioner, reiterated the sequence of events and relied on the correspondence as well as TES' Rejoinder dated 5<sup>th</sup> August, 2004.

8. Shri. Karandikar submitted that, prior to 1996, Vapor (now TES) was a HT consumer of MSEB. Subsequently, its HT power supply was converted into LT supply by MSEB at its request, with sanctioned load of 65 HP. On 8<sup>th</sup> August, 2000 an application was submitted to MSEB for sanctioning additional load of 35 HP, thereby raising total load to 100 HP. He stated that MSEB vide letter dated 18<sup>th</sup> September, 2000 advised the applicant to comply with certain requirements by submitting documents and papers as mentioned therein. A number of documents and papers were submitted, and several others were already with MSEB considering TES had been a consumer since long. However, the additional load has not been released till today.

9. Referring to MSEB's Reply dated 8<sup>th</sup> July, 2004 and the list of documents required by them, Counsel for the Petitioner stated that an issue had been raised regarding the HT connection having been in the name of Vapor. However, it is admitted that change in name had been applied for, and the consumer remained the same. MSEB's Reply also states that their document requirements were not fully complied with, and the matter was kept pending even though technical feasibility had been ascertained and was kept ready. He drew attention to the fact that there was a gap of 3 years between MSEB's letters dated 18<sup>th</sup> September, 2000 and 16<sup>th</sup> August, 2003 (regarding requirement of 3 documents, and stating that other documents in letter dated 18<sup>th</sup> September, 2000 could be given after payment of deposit for additional load.) If there had been no compliance of the letter dated 18<sup>th</sup> September, 2000, TES should have been told or the application rejected shortly thereafter.

10. Turning to the documents required under letter dated 18<sup>th</sup> September, 2000, TES Counsel stated that, as regards submitting Site Plan showing point of supply duly signed by TES and MSEB, since it is to be jointly prepared by the Petitioner and MSEB, TES alone should not be held responsible for non-compliance. He further submitted that as regards providing internal



wiring details with size of wires, etc., since TES' HT connection was converted into LT, the details of internal wiring and its size and other infrastructure details were not required for sanction of additional load by MSEB, but only for initial connection. As regards Power of Attorney/ copy of Board Resolution, Counsel submitted that since the Petitioner is an existing consumer, all these papers are already on MSEB's record.

11. Counsel for TES further submitted that permission of the Electrical Inspector is not required at the time of MSEB sanctioning additional load, and could be submitted when MSEB release additional load to TES. Counsel stated that a test report from the Electrical Contractor can be given only when the machinery is installed and connected to power supply. Similarly, MSEB are asking TES to submit copy of the latest energy bill, and the receipt for charges paid for service connection and service line for 65 HP. These are issued by MSEB themselves, and MSEB have their own copies in their records. As such, Counsel for TES submitted that there can be no nexus between these documents and MSEB's statutory obligation when this was not a case of a new connection.

12. Counsel for TES submitted that MSEB vide letter dated 16<sup>th</sup> August 2003 asked TES to submit another set of documents. By that time, TES had already submitted several relevant documents, which MSEB have not acknowledged. Vide letter dated 16<sup>th</sup> August, 2003, MSEB advised TES to submit Power of Attorney / Board Resolution in support of the application, which was unnecessary since the Petitioner is an existing consumer. The other two documents asked for are copy of receipt for payment of service connection and service line charges for the existing connection, which are already in the records of MSEB. He submitted that, even after paying the charges, MSEB had not released the additional load.

13. Counsel for TES submitted that, since there had been no response from the local MSEB officials, he wrote a number of letters to the SE / EE, Satara requesting them to look into the matter. However, to TES' surprise, the SE, instead of trying to resolve the issue, wrote to the Petitioner informing that he is wrongly addressing him and advising TES to get in touch with the Assistant Engineer, Lonand, Satara. In this connection, TES Counsel drew attention to EE, Phaltan's letter dated 13<sup>th</sup> August, 2004 (para 2-Annexure 8). He submitted that this was MSEB's real grievance, i.e. the approach of TES to higher authorities. He also pointed out para I(4) of the letter, which states that "the proposal was pending at Sub Division Lonand/ Division office, Phaltan inadvertently and through oversight for the period September 2000 to August 2003", i.e. for 3 years. The letter even states that it was upto TES to pursue it, just as other consumers do.

14. Counsel for TES submitted that the Flying Squad of MSEB visited the factory premises in 2003 and alleged that the Petitioner is utilizing unauthorized additional load upto 104 HP, and slapped a penalty of Rs. 84,055/-. He stated that the Petitioner has challenged this before the Civil Judge, Junior Division, Khandala and the matter is now sub-judice. These facts have been mentioned in the Petition and have not been suppressed. The Court will decide the facts and whether the Petitioner is liable to pay the penalty. However, those Court proceedings cannot be interlinked with the matter of the application for additional load. As per the provisions of the old Act and Section 43 of EA, 2003, MSEB are liable to release the additional load within one month and, therefore, MSEB are in violation of the statutory duty cast upon them. None of the documents still being asked for are necessary for sanctioning additional load.

15. Dr S.L. Patil of the Thane Belapur Industries Association (TBIA) pointed out that TES' application was made in the year 2000, and the Flying Squad visit and Court case started only 3 years later, and queried as to what MSEB was doing during that period.

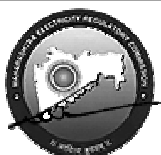


16. Shri. Patki, Counsel for MSEB stated that, admittedly, certain compliances for release of additional load were pending from TES as per MSEB's Conditions of Supply, and any waiver would set a precedent for all other cases. The documents cited were required even for sanction of additional load, and not only for new connections. Counsel for MSEB stated that in the interest of safety and as precautionary measures, it was necessary to review the wiring, and the Petitioner was advised to submit Electrical Contractor's test report. He submitted that, to ensure safety, it is necessary to ascertain whether the wiring is properly done and would sustain the additional load. MSEB could not go on the basis of the situation as it was much earlier, but on the factual position at the time of sanction. It is also a moot point as to whether the Petitioner was genuinely interested in additional load, considering the fact that he did not pursue his application for 3 years, nor did he comply. MSEB had also requested TES to visit their office for discussion and sorting out the issues, but there was no positive response.

17. Counsel for MSEB further submitted that had there been a complaint or grievance against MSEB, the Petitioner should have approached the Consumer Grievance Redressal Forum, which has been established under Section 42 of EA, 2003. In view of the Forum's jurisdiction, he submitted that the Petition is not maintainable before the Commission, and is not covered under either Section 43 or Section 86 of EA, 2003.

18. To the Commission's observation that the Pune Forum was set up only recently, MSEB Counsel responded that even so the Commission did not have jurisdiction under Section 86. As regards the allegation of un-authorizedly using extra load, he drew attention to MSEB's Reply and Annexure 8 (letter dated 13<sup>th</sup> April, 2004) which sets out the detailed facts and sequence. It showed that, even before the additional load could be sanctioned, TES was already extracting excess energy, and referred to the Flying Squad report, which found that the sanctioned load is 65 HP, whereas TES were using a load of 104 HP. Therefore, TES is liable for action and MSEB reserve their right to pursue the same before the proper forum. To Commission's observation that MSEB's finding was based on "connected load", which is a concept which is no longer relevant, as against sanctioned load, MSEB Counsel submitted that these matters would be decided elsewhere. He queried as to whether, when the Petitioner has been asked for certain documents which are standard even for additional load, he can plead overuse by necessity when he could have given the documents at the relevant time itself. MSEB could also have explained to him why certain documents were required. He submitted that, in order to take precautionary and safety measures, it is necessary for MSEB to see that the power lines are properly laid, the size of the wires are as per the standards laid down and the Electrical Contractor certifies the same. MSEB will also have to verify from the Petitioner's current bills what his sanctioned load is, the type of his connection, current meter readings and whether he is in arrears or not, and for which he was advised to submit the latest energy bill. These bills and other papers are supposed to be examined and scrutinized by a particular officer, who may not have copies of all these papers, though they may be in the records of MSEB at some different location.

19. Counsel for MSEB explained that the site plan, for instance, is necessary to understand whether any changes have been made to the structure subsequent to his obtaining the original power connection. The plan is also required to understand whether the power lines could be properly laid down or not. Counsel for MSEB queried as to (a) why the Petitioner did not comply with the requirements after making an application in 2000 for sanction of additional power load? (b) what he was doing all these years? (c) why he has suddenly woken up and filed this Application? Counsel for MSEB submitted that the reason for now approaching the Commission after all this time was because MSEB had initiated action for extracting power in excess of sanctioned load on the basis of the test report of the Flying Squad. Counsel for MSEB further



submitted that, on the basis of test report of the Flying Squad and the machinery and equipments being used by him, MSEB had advised him to apply for HT connection, but TES questioned that.

20. Shri. Goenka of Vidarbha Industries Association drew attention of the Commission to the provisions of Sections 43(1) (under which supply has to be given within 1 month) and 142 (regarding non-compliance) of the EA, 2003 and submitted that the Commission is authorized to look into and adjudicate upon the present case.

21. Addressing the point raised by Shri. Goenka, Counsel for MSEB submitted that several general directions were given to MSEB in the 1<sup>st</sup> tariff Order passed on 5<sup>th</sup> May, 2000. Clause 27 of the operative Order states that "*MSEB should release new connections within a stipulated period*" and submitted that in this case the Petitioner is not seeking any new connection. The Commission observed that the tariff Order is not relevant to this, and that the question is of efficiency and good business practice. Dr S.L. Patil of TBIA observed that MSEB want paying consumers, but their actions are contradictory.

22. Regarding non-compliance in the circumstances of the case, Counsel for MSEB submitted that, as per the provisions of Section 43, MSEB are supposed to release supply within one month from the receipt of application. However, Section 43 has to be read with Sections 48 (additional terms of supply) and 53 (safety) of EA, 2003. These Sections empower MSEB to put additional terms and conditions and also restrictions for proper safety of electrical supply. Similarly, these provisions are to be read with the provisions of MSEB's Conditions of Supply. The provisions of Section 43 cannot be read in isolation.

23. Dr S.L. Patil of TBIA drew attention to MSEB's letter to TES in which "oversight" had been admitted for 3 years after the application for additional load had been made. MSEB Counsel responded that the letter had also pointed out non-compliance with MSEB's requirements. Counsel for MSEB also submitted that the provisions of Section 142 will come into play only when specific directions have been given and MSEB have not complied with them.

24. In response to the observations of the Commission, MSEB Counsel also submitted that MSEB are ready to consider the application for additional power load provided the Petitioner complies with all the requirements, and only after they conduct a joint inspection of the work done by TES and understanding the exact requirements. Counsel and CE, MSEB submitted that, in case the Petitioner is ready to comply with these requirements, MSEB are ready to undertake joint inspection of the premises and also to sanction additional power load within one month. MSEB and the Petitioner agreed to joint inspection in the 1st week of November, 2004.

25. The Petitioner's representative submitted that TES will comply with whatever documents are required by MSEB and also agreed to joint inspection. Concluding the hearing, the Commission directed that, thereafter, MSEB should decide the application for additional load by the 1<sup>st</sup> week of December 2004. The Commission observed that other issues not relating to the present Petition such as MSEB taking action against him for extracting excess power and TES challenging the penalty in the Civil Court, can be dealt with separately by respective parties, and that these directions are without prejudice to their rights with regard to them. The Record of the hearing held on 20<sup>th</sup> October, 2004 was circulated to the parties on 10<sup>th</sup> November, 2004 for compliance.



26. Subsequent to the hearing, under letter dated 28<sup>th</sup> October, 2004, TES informed the Commission that their power supply had been disconnected, although MSEB's earlier notice of 2003 for disconnection of power for non-payment of additional penalty charges of Rs 84,055/- had been challenged in the Civil Court and the amount deposited in Court, and alleged contempt of that Court as well as the Commission by MSEB. From subsequent correspondence between TES and MSEB, copies of which were endorsed to the Commission, it appears that the power was restored to TES following an Order of the Civil Court, which also directed deposit of a further amount of Rs 1.50 lakhs, being the disputed amount claimed by MSEB for the subsequent period. TES have also pointed out to MSEB that local officials have not been accepting payment of regular monthly bills excluding the disputed amounts. While suggesting that MSEB review the appropriateness of these actions in the circumstances of the case, the Commission notes that it is primarily concerned with the matter of TES' pending application for sanction of additional load. The parties are already before the Civil Court on other matters, and reiterates the observations made at the hearing, set out at para 25 above. It may also be noted that consumers are now also entitled to take up unresolved grievances, etc. as defined in the relevant Regulations under Section 42(5) of EA, 2003 with the appropriate Forum.

27. As regards the pending application for sanction of additional load, essentially MSEB's contentions are that TES has not yet complied with various documentary and other requirements stipulated in such cases under their supply conditions, and further that the load found upon surprise inspection (albeit 3 years after the application) warranted a shift to HT, for which also no compliances have been forthcoming. Thus, according to MSEB, the provisions of Section 43, if at all relevant in cases such as this, are not attracted since the applicant has not fulfilled the pre-requisites for further consideration. TES contends that these requirements have either been fulfilled or can be met only after sanction, or are already on MSEB's record, or are not relevant when only additional load is sought. The Commission expects that the handling of and requirements for such applications will become more transparent and streamlined once the Regulations regarding the Supply Code and Standards of Performance, which are in the process of finalization, are notified, so that they are expeditiously disposed of.

28. Accordingly, in order to settle the matter in the meantime, the Commission had given the directions set out at para 25 above during the hearing. Thereafter (apart from the correspondence regarding disconnection, payment of penalty for the further period, etc.), under letter dated 24<sup>th</sup> November, 2004, MSEB have reported that TES had been asked to submit test report in order to facilitate joint inspection. This has been received on 22<sup>nd</sup> November, 2004 and the joint inspection is expected to be carried out in the next 10 days. However, no further confirmation has been received from MSEB.

29. In view of the above, the Commission disposes of the Petition reiterating the directions at para 25 with a revised time frame, i.e. joint inspection by 15<sup>th</sup> December, 2004 (if not already completed), and final decision on the grant of additional load within a month thereafter.

Sd/-  
(Shri.A. Velayutham)  
Member.

Sd/-  
(Dr. Pramod Deo)  
Member.

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

