

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 25 of 2002**

**In the matter of**  
**wrongful application of HTP-II tariff for electricity supply to Maharashtra State**  
**Farming Corporation, and related matters.**

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

**ORDER**

**Dated: August 19, 2003**

M/s Maharashtra State Farming Corp. Ltd. (MSFC), Pune's Petition dated 25.10.2002 challenges the "*illegal and arbitrary action of the Respondent (MSEB) in issuing electricity bills on the basis of HTP-II instead of HTP-VI or VII.*" MSFC's substantive prayers are that:

- i) MSEB should consider the Petitioner as HTP-VI or HTP-VII category for the purpose of billing instead of HTP-II (industrial category) as is being done presently.
- ii) the bills (based on HTP-II tariff) raised by MSEB be declared invalid, and refunds made for the period August 1998 to September 2000. The bills for the period from 1979 onwards (since the HP based agricultural tariff was introduced) should be corrected on the same lines.
- iii) MSEB should furnish records and proceedings pertaining to the notice of Demand dated 5.8.2002 and 23.8.2002 for recovery of arrears and disconnection in the event of failure on the part of the Petitioner.
- iv) MSEB be restrained from recovering delayed payment charges and interest on outstanding dues based on bills prepared on the basis of faulty application of tariff category.
- v) all the outstanding bills revised on the basis of HTP-VI & HTP-VII for settlement of arrears.
- vi) MSEB be directed to supply electricity through its own network, and take over MSFC's existing network at its Walchandnagar farms.

2. The hearing on 20<sup>th</sup> November 2002 was adjourned at the request of Counsel for MSEB to facilitate a field inspection of load and verification of the data to co-relate it with the parawise remarks that could be submitted only on 18<sup>th</sup> November. The Petition was heard further on 10.1.2003 when Shri K.A. Durve, Counsel for MSFC set out the background of the case. MSFC are a Government of Maharashtra (GoM) undertaking registered under the Companies Act 1956 and came into existence in 1963 under the provisions of the Maharashtra Agricultural Lands (MAL) (Ceiling on Holdings) Act, 1961. Thereafter, under Section 28 of the MAL Act, the surplus land belonging to Walchandnagar Industries, Walchandnagar, District Pune was taken over by GoM and handed over to MSFC with the existing infrastructure, including electricity network, roads, residential quarters, etc., for the purpose of management and cultivation. Counsel for MSFC submitted that their entire activity is 'agricultural' and not 'industrial' or 'commercial' as per their Articles of Association.

3. MSFC Counsel referred to Section 21 of the MAL Act, which stipulates that, after the acquisition of land, the activity (i.e. of producing raw material for the manufacture of any goods, articles or commodity by the undertaking) is to be maintained in respect of the acquired land. At that time, the contention of the GoM was that, when the rights were taken over by them, the status of raw material would not be affected and, therefore, this special provision was incorporated in the Act.

4. Counsel for MSFC stated that upto 1979 MSEB were supplying electricity on a metered basis to Walchandnagar Industries who, in turn, used to supply it to their constituent units. In 1979, MSFC set up a separate transformer (22 / 6.6 KV, 500 kVA) at their own cost at Kalamb for drawing energy for mixed purposes viz. (i) agriculture (ii) their divisional offices, and (iii) domestic use of their employees. MSFC were drawing power at a single point, and MSEB were charging them on the basis of metered consumption at the industrial tariff HTP-II. Till 1987, as a general practice, bills were issued on the basis of actual meter reading. Thereafter, the HP based tariff for agricultural pump sets was introduced, but it was not extended to MSFC, who have a mixed load that is predominantly agricultural. Counsel submitted that, while their end-use requirement is only for 440 volts, MSFC were receiving power for their distribution network at 6.6 KV, which therefore requires further stepping down. This compelled MSFC to install a large number of additional transformers at various places. Drawing the Commission's attention to para 6 of the Petition, Counsel pointed out that MSFC had requested MSEB on various occasions to supply at 440 volts through the MSEB's own network, but to no avail.

5. To a query from the Commission, Counsel for MSFC clarified that, apart from small garages for repairing their own vehicles/ tractors, etc., administrative offices and flour mills for the employees, no industrial or commercial activities were carried out. As stated in the Petition, Counsel submitted that, in 1991, MSFC requested MSEB that the electricity consumption for their agricultural farms and electric pumps installed at various wells be charged as per the HP (agricultural) tariff. Similarly, in 1993, MSEB were asked to segregate residential connections and charge on the basis of metered residential consumption. Neither request was acceded to, and MSEB continued charging MSFC on the very much higher basis of the HTP-II (Industrial) tariff. The matter was followed up at various levels with the MSEB and GoM, without result.

6. Referring to Para 9 of the Petition, MSFC Counsel submitted that MSEB's own officers, viz. the Executive Engineer, Baramati, had recommended, based on a field survey, the revision of tariff category to HTP-VII, but MSEB are now seeking to disown this stand. In terms of the 1998 tariff, most of MSFC's activities fall in the HTP-VII tariff category. He submitted further that, subsequent to several communications while discussions on the matter were in progress at different levels, MSEB issued a supplementary bill amounting to Rs. 66,72,792/- on 4<sup>th</sup> March 2000. Thereafter, MSEB served a disconnection notice vide telegram dated 23<sup>rd</sup> March 2000, which MSFC replied to vide telegram dated 27<sup>th</sup> March 2000 citing the dispute persisting. MSEB confirmed vide their letter dated 10<sup>th</sup> April 2000 regarding the matter being under consideration and referred to CE (Commercial), MSEB.

7. Owing to the delay by MSEB with respect to changing the category of tariff applicable to them, the MSFC Chairman, who is also the State Revenue Minister, was approached and a meeting was held with him on 12<sup>th</sup> October, 2000. According to MSFC Counsel, at this meeting MSEB officials agreed to the following, as summarized at para 18 of the Petition:

- i) That for the month of October, 2000 and thereafter, the assessment of bills would be made on the basis of Horse Power (Block Tariff) or as per the Tariff mentioned in paragraph 3 of the minutes of the meeting (annexed as EXHIBIT-G of the Petition),
- ii) That MSEB should issue appropriate orders for change in tariff within 8 days,
- iii) That, if required, an Agreement be entered into accordingly and immediately,
- iv) That the arrears (for the period from 1979 to August 2000) be decided by MSEB in the meeting of their Board and, after appropriating the amounts found due, the balance be returned to MSFC (this was on account of the fact that MSFC had been wrongly forced to pay industrial tariff when in fact the agricultural tariff ought to have been applied),
- v) That the meter readings and the demand charges on the pending bills be revised and the amounts due be informed to MSFC for expeditious payment.

8. However, it was submitted on MSFC's behalf that MSEB called upon them to pay Rs. 29.50 lakhs, said to have been worked out on the basis of the HTP-VII tariff for the period from August 1998 to September 2000 on a provisional basis till final settlement of the matter. The correctness of computation of this provisional bill was questioned, the correspondence relating to which is at Exhibits- H, I, J, K and L of the Petition. Meanwhile, MSFC arranged to pay, in two phases till February 2001, an ad-hoc amount of Rs 15 lakhs. However, MSEB, took no final decision. MSFC Counsel submitted that, thereafter the bills for the months of October 2000 to June 2002 were raised from time to time with corrections on the face of the bills applying HTP-VII tariff. But the arrears amount shown was disputed and hence not paid by MSFC. On 5<sup>th</sup> September, a bill for August 2002 without such tariff category correction was issued to MSFC, the due date for payment being 21.9.2002.

9. MSFC were served with a notice-dated 5.8.2002 for disconnection for non-payment of arrears referred to in the bill for the month of June 2002, under Section 24 of the Indian Electricity Act. MSFC immediately took this up with the concerned authorities. However, the electricity supply was disconnected on 14.8.2002. Counsel for MSFC submitted that, during this whole sequence, MSEB never clarified the basis of their calculations for issue of supplementary

bill showing them to be in arrears even though MSFC were regularly meeting their bill payment liabilities.

10. Counsel for MSFC stated that, aggrieved by the disconnection, MSFC approached the High Court in **WP No.5141 of 2002** in September 2002. Under its Order dated 13.9.2002, the Court directed that (i) MSFC should deposit Rs.14.50 lakhs within 4 weeks and pay the current bills, (ii) MSFC should approach the Commission within four weeks (subsequently extended) for the determination of tariff applicable to their farms, and also directed MSEB to restore electricity supply. MSFC have approached the Commission accordingly.

11. In the light of the above, Counsel summarized MSFC's contentions and prayers as follows:

- MSFC's activities are 'agricultural' and, therefore, the agricultural tariff should be made applicable to them.
- MSEB should be restrained from charging interest on the outstanding arrears, which are disputable, till final Orders on the present Petition.
- MSEB should give details of the computation on the basis of which such 'arrears' were arrived at.
- MSEB should take over the entire distribution system from MSFC at mutually agreeable terms and start supplying electricity directly to the individual consumers.

12. Counsel for MSEB contended that MSFC's activities and consumption of electricity include agricultural, commercial, industrial, residential purposes, etc., and that the tariff under the HTP-II category has been correctly applied since MSFC are served at HT level. He submitted that, for MSFC's benefit and taking into consideration the peculiarities of their internal set up, MSEB have bifurcated the entire connected load demand into two parts, i.e. 60% for the agricultural activities and 40% towards residential / commercial activities, and have been raising bills accordingly. He pointed out that MSFC could have approached the Commission at the time of the tariff revision process for a separate category for them to resolve these problems, but did not do so. Counsel further submitted that MSEB are prepared to make separate metered supply points to individual consumers subject to compliance of all the formalities and payment of the required amount by MSFC.

13. Clarifying to the Commission the procedure MSEB had adopted while taking over other distribution systems Counsel submitted that, in such cases, they had taken over the entire distribution network along with individual consumers. However, in this particular case, the consumer is only one, viz. MSFC. Moreover, MSFC's distribution network is not compatible with the present pattern of distribution infrastructure of MSEB. Thus, MSEB would have to create a separate distribution system for the existing network for agriculture and a new network for residential purposes, which would cost around Rs.50 lakhs. However, if MSFC are prepared to contribute to the cost of installation of the required distribution network, the matter could be considered by MSEB.

14. Regarding disconnection of power supply, MSEB Counsel submitted that MSFC were a defaulter (even for the provisional amount) and, in compliance of the High Court (Nagpur Bench) directives, MSEB had issued disconnection notices for non-payment of arrears. Counsel admitted that the case of MSFC, taking into account the nature of its activities and manner of electricity supply and distribution, is a peculiar one and a lasting solution acceptable to both parties needs to be arrived at.

15. In reply, Counsel for MSFC submitted that MSEB can take-over the entire distribution network free of cost since MSFC lack the required infrastructure for operation and maintenance of the system. Moreover, electricity distribution is not a part of their functions. MSFC are also ready to extend all help, including the possibility of financial support that would have to be explored through budgetary support from the State Govt.

16. In further written submissions furnished under their letter dated 13.12.2002, MSEB have stated that the electricity supplied by MSEB to MSFC's transformer sub-station at Kalamb (via a 22 KV line from the Walchandnagar sub-station) is further distributed by the latter through 19 transformers to their constituents for different purposes, and it is not possible to segregate and compute the quantum of consumption for these different purposes at the respective locations since MSEB have not provided the metering systems. Meters have been installed by MSFC for their internal purposes without reference to MSEB, and MSEB cannot testify to their correctness. Moreover, MSFC have not set up independent networks separately for residential, commercial, industrial and agricultural uses. Thus, MSEB contend that it is not possible for them to compute the energy consumed for different purposes by MSFC. In any case, as far as MSEB are concerned, they supply electricity to MSFC at one point, the applicable tariff category for which is HTP-II. MSEB have argued that there is no other provision in the tariff approved by the Commission for breaking up the charges into commercial, industrial, residential and other uses where a consolidated supply is made at one point to a consumer. As far as recommendations made by MSEB officers is concerned, these are only their views, and the Board has taken a decision in the matter.

17. Pursuant to discussions at the initial admissibility hearing, a joint inspection was carried out on 25.11.02, the report of which was furnished along with MSEB's written submissions dated 13.12.02, setting out the locations of MSFC's transformers, their capacity, distances, and the residential, commercial, industrial and agricultural load connected to each. On the basis of the joint inspection, MSEB have submitted that, out of the total connected load of 400 KW, 317 HP (237.75 KW) relates to agricultural load, i.e. around 60%. They have argued, however, that "there is no co-relation between the quantum of load vis-à-vis consumption and the purpose-wise consumption pattern can be altogether different than the pattern of load". MSEB have also pointed out that the connected load (400 KW) is in excess of MSFC's sanctioned load (307 KW).

18. In their rejoinder dated 3.1.2003, MSFC have pointed out, with supporting material, that MSEB have in fact given separate connections to MSFC at some of their irrigation wells, which are being charged at the agricultural tariff on HP basis. Similarly, MSEB have given residential connections for some of MSFC's employees, installed separate meters, and are recovering charges directly from them. In fact, MSFC had been seeking installation of separate meters generally, but without result. MSFC have also submitted that the particulars of the provisional bill of Rs 29.50

lakhs provided by MSEB clearly indicate that they are able to compute the loads consumed for different purposes.

19. The basic issue in dispute in this case concerns the tariff which should apply in the peculiar circumstances of MSFC's operations at their erstwhile Walchandnagar farms. In the ordinary course, the Commission would have jurisdiction to entertain the matter pertaining only to the period after its coming into existence on August 12, 1999. However, in the light of the High Court direction to the Commission in the Mahad Manufacturers' Association case (Writ Petition No. 2286 of 1998) to examine and report on a tariff hike effective from a date prior to the coming into existence of the Commission, the Commission would have jurisdiction to determine the matter only from the period from September, 1998 (i.e., with reference to the MSEB tariff schedule effective from 1.9.1998) onwards, though the parties would also be free to consider the principles of such determination in the case of any negotiated settlement for the prior period.

20. The joint inspection report dated 25<sup>th</sup> November 2002, furnished to the Commission on 13<sup>th</sup> December 2002 in the course of these proceedings, which was carried out by MSEB and MSFC, should be the basis for determination of the applicable tariff. From its first Tariff Order of May, 2000 in Case No. 1 of 1999 onwards, the Commission has stressed the need for metered billing. In the case of MSFC, since the input energy is metered, a proportionate allocation of load based on the joint inspection report is possible. In case of mixed load on a particular distribution transformer, the metered load should be the basis for billing.

21. Therefore, in view of the above and in the circumstances of the case, the Commission passes the following directions:

- i) MSEB shall recompute the supplementary bill dated 4<sup>th</sup> March 2000 pertaining to the period from October 1998 onwards, based on the criteria set out at para 20 above. After appropriating the amounts found due against the provisional or other payments already made by the Petitioner, the balance should be claimed or returned, as the case may be, from /to MSFC, with 12% simple interest, taking the benchmark set for such interest in the Commission's tariff Order dated 5.5.2000. The interest computation should be carried out for the period for which it is due to MSEB or eligible for refund to MSFC. MSFC shall extend all co-operation towards speedy reconciliation wherever required. The parties should separately take appropriate steps in the light of this Order before the concerned Bench of the High Court seized with the matter of arrears of MSEB dues, if required in terms of those proceedings.
- ii) Similarly, bills for the subsequent period should be recomputed on the same principles as above, and at rates as per the approved tariff prevailing at the relevant time.
- iii) As far as billing for future periods is concerned, a similar approach based on the above principles and on metered billing should be adopted. However, MSFC are also free to agitate their claims with regard to the tariff that should apply to them in the course of the separate proceedings that have been initiated for determination of MSEB's tariff for 2003-04.

- iv) As far as billing disputes pertaining to the period before October 1998 are concerned, the Commission, as explained earlier, would not like to deal with them.
- v) Regarding take over of MSFC's distribution infrastructure, this is a matter best left to the commercial prudence and negotiations between the parties.

Sd/-  
(Jayant Deo)  
Member

Sd/-  
(Dr Pramod Deo)  
Member

Sd/-  
(P. Subrahmanyam)  
Chairman, MERC

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