

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.

CASE No. 5 of 2003

In the matter of Petition of Maharashtra State Electricity Board for Review of Order dated 11.2.2003 in respect of MSEB Tariff rate applicable to streetlight services for Murbad and Additional Murbad Industrial Areas and differential tariff recovery through supplementary bill raised by the MSEB.

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

ORDER

Dated: **May 02, 2003**

Maharashtra State Electricity Board (MSEB) have filed a Petition on 10th April 2003 for review of the Order dated 11.2.2003 passed by the Commission in Case No.24 of 2001, in the matter of the MSEB tariff applicable to street light services for Murbad and Additional Murbad Industrial areas, and differential tariff recovery through supplementary bills. The Review Petition also seeks that, pending its hearing and final disposal, the operation and implementation of the Order be stayed, and that MSEB be allowed to raise supplementary bills in respect of retrospective recovery. The Review Petition was heard for admission on 29th April 2003.

2. In their affidavit for review, MSEB have argued that the Commission's Order dated 11.2.2003 suffers from errors apparent from the face of the record, and also requires review on account of sufficient reasons either not being taken into account, or being incorrectly appreciated in the Order, which include the following:

- (a) Although the Commission determines the tariff applicable for different purposes of power supply by fixing tariff for different categories, it cannot determine the category of an individual consumer.
- (b) Given MSEB's scale of operation, errors can occur in the categorisation of a consumer for a number of reasons, and may not be detected for some time.
- (c) In such cases, corrective changes made by MSEB upon detection do not amount to recategorization, but only to a rectification of errors in billing.
- (d) The Commission erred in stating that any reclassification would affect the revenue projected in the Commission's Tariff order. Moreover, the revenue collection would be hardly affected when there are only a few such cases.
- (e) The effect of erroneous billing or categorisation results in the consumer not paying what he is required to pay for the electricity supplied to him, and the Order restrains MSEB from adopting corrective remedy.
- (f) Such erroneous billing, if not corrected, would result in undue gain to individual consumers, and in discrimination between consumers similarly situated.
- (g) By taking away MSEB's power to make retrospective corrections / recovery when mistakes are detected, MSEB are deprived of legitimate revenue and, therefore, their right to sue for such recovery has been wrongly superceded.

- (h) There may be many reasons for a change in category, and the Commission erred in passing a blanket Order requiring either the affected consumer or MSEB to approach the Commission for rectification of such categorisation in such cases, which amounts to requiring the ratification of the day-to-day administrative actions of MSEB. Moreover, it would affect MSEB's internal operations and staffing requirements.
- (i) The Commission failed to appreciate the Order of the Supreme Court in the matter of Swastic Industries v/s MSEB to the extent of the right of the Petitioner in respect of retrospective recovery.
- (j) Moreover, administrative action of correcting an error in revenue collection is not circumscribed by any law of limitation.

3. In oral arguments at the time of hearing, Counsel for MSEB, while drawing attention to the written submissions made in the Review Petition, submitted that the application was for review of the general directions contained in the Commission's Order dated 11.2.2003, and was not specifically directed against the original Applicant in that case, i.e. the Maharashtra Industrial Development Corporation. These directions, contained at paras 23 and 24 of the Commission's Order concern a number of issues which have been spelt out at para 19 of the Order, and restrict the right of MSEB to correct errors in billing or categorization, and to recover on that basis for the appropriate period with retrospective effect, with serious adverse implications for the revenue to which they would otherwise be rightfully entitled. A review of the Commission's Order would necessarily involve a substantive reconsideration of the issues as decided by the Commission.

4. Section 27 of the Electricity Regulatory Commissions Act, 1998 provides that "any person aggrieved by any decision or order of the State Commission may file an appeal to the High Court". The ambit of review by the Commission itself is constrained by the provisions of Regulation 87(1) of the MERC (Conduct of Business) Regulations, 1999, which reads as follows:

"Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision / order was passed by the Commission or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within 60 days of the date of decision / order, to the Commission."

5. It is clear from the Review Petitioner's written and oral submissions that what is sought is a substantive reconsideration of the findings and directives of the Commission, without any supporting claim that they meet the test for the admissibility of review as laid down in Regulation 87(1). The appropriate forum for redressal of MSEB's concerns with regard to the Order, would, therefore, be the High Court in terms of the clear provisions of Section 27 of the ERC Act, 1998. The Commission cannot ascribe to itself the powers of the High Court by entertaining an application in the guise of a review when it goes beyond and does not meet the parameters laid down by the provisions of Regulation 87. The Commission, therefore, dismisses the Petition for Review as inadmissible.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC.

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