

RECORD OF PROCEEDINGS

DATE OF HEARING : August 21, 2007 at 11.00 hrs
CASE No. : 10 of 2007
PETITIONERS : Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”)
RESPONDENTS : Mula Pravara Electric Co-operative Society Limited (“**MPECS**”)

MATTER : Petition filed by MSEDCL seeking initiation of proceedings for revocation / suspension of the license of MPECS, under Sections 19 and 24 of the Electricity Act, 2003; and interim reliefs in the nature of (i) directions upon MPECS to forthwith pay to MSEDCL arrears amounting to Rs. 951.49 crore with interest, (ii) adjustment of the said amount as Regulatory Liability Charge in the Annual Revenue Requirement of MSEDCL and appropriate adjustment in tariff, (iii) appointment of an Administrator on the business of MPECS, and (iv) directions upon the Administrator to work out a scheme for the payment of arrears and regular bills of MSEDCL

CORAM : Chairman and Members

MSEDCL filed a Petition on May 25, 2007 seeking initiation of proceedings for revocation / suspension of the license of MPECS under Sections 19 and 24 of the Electricity Act, 2003 (“**EA 2003**”); and interim reliefs in the nature of (i) directions upon MPECS to forthwith pay to MSEDCL arrears amounting to Rs. 951.49 crore with interest, (ii) adjustment of the said amount as Regulatory Liability Charge (“**RLC**”) in the Annual Revenue Requirement of MSEDCL and appropriate adjustment in tariff, (iii) appointment of an Administrator for running the business of MPECS, and (iv) directions upon the Administrator to work out a scheme for the payment of arrears and regular bills of MSEDCL. The Commission scheduled the hearing in the matter for August 21, 2007 in the presence of the Government of Maharashtra (Energy Department) (“**GoM**”) and four consumer representatives authorized on a standing basis under the Electricity Act, 2003 (“**EA 2003**”). Notices were issued accordingly.

2. At the hearing held in the matter on August 21, 2007, Smt. Deepa Chawan, Counsel for MSEDCL, submitted that under the present proceedings, MSEDCL has sought the invocation of either Section 19 or Section 24 of the EA 2003 on the license of MPECS. Counsel referred to Section 19(3) of the EA 2003, and submitted that the notice that has been issued by the Commission to MPECS notifying of the present proceedings

initiated by MSEDCL shall not be construed as a notice under that said sub-section, and a separate notice in terms of the said sub-section needs to be issued.

3. The Commission enquired of Counsel Smt. Deepa Chawan as to why invocation of both Sections 19 and 24 of EA 2003 has been sought for by MSEDCL. Counsel submitted that reliefs in the nature of invocation of Section 19 and Section 24 of the EA 2003 have been sought for alternatively. It was submitted that the negligence or otherwise of MPECS, which has been largely detrimental to MSEDCL, attracts both Section 19 as well as Section 24 of the EA 2003. The Commission may exercise jurisdiction and initiate necessary actions either under Section 19 or Section 24 of the EA 2003.

4. Counsel Smt. Deepa Chawan referred to the order dated April 30, 2003 passed by the High Court, Bombay, Nagpur Bench, in Writ Petition No. 3403 of 2002 [Annexure 5 to the Petition of MSEDCL] and invited the attention of the Commission on the operative part of the said order (at pages 48 and 49 of the said Petition). Counsel further referred to the contents of paragraphs 19 to 22 of the Order dated December 16, 2005 passed by the Commission in Case No. 33 of 2005 (in the matter of Government Resolution dated 24th August 2004 in the matter of continuation of MPECS) which are as hereunder :

“19. During the hearing, Shri P.B. Patil, Deputy Secretary, GoM submitted that the State Government vide its said GOM-GR, keeping in mind arrears due to MSEB, has opted for continuation of MPECS as a licensee by providing transparent subsidy mechanism subject to the condition as prescribed by the Commission for efficiency improvement of MPECS. In addition, he submitted that the State Government had also decided to treat the arrears payable by MPECS to MSEB as Regulatory Asset’.

20. Upon an enquiry by the Commission, on whether the GOM-GR can be binding to the extent it deals with the issues in the regulatory domain. Shri Patil submitted that the process to remedy the said GR through Cabinet approval has been initiated and would require some time.

21. In the above circumstances, the Commission is of the view that the functions of the Commission under sub-sections (1) and (2) of section 86 of the Act are distinct and the GOM-GR would not be operative as regards creation of ‘regulatory asset’.

22. The Commission hereby advises the State Government to expedite the process to remedy the said GOM-GR as submitted by Shri P. B. Patil, Deputy Secretary, in view of the above observations of the Commission.”

It was submitted that the said Order dated December 6, 2005 has achieved finality, as MPECS has not initiated any review or appellate proceedings, in pursuance thereto. However, no action has been taken by the GoM as contained in the cited portion of the said Order dated December 16, 2005.

5. Counsel Smt. Deepa Chawan submitted that MPECS are not in sound financial position to continue their distribution licensee functions. Apart from pending bills and arrears, MPECS are not making payments of the present bills as issued by MSEDCL.

6. Smt. Deepa Chawan submitted that the defense advanced by MPECS that their consumer base is largely from the agricultural sector, is a complete 'eyewash' and should not be entertained by the Commission. Counsel filed a copy of the Government Resolution dated May 27, 2005 wherein concessional rates, as contained thereunder, were fixed by the GoM for agricultural consumers of MPECS and MSEDCL. Counsel invited the attention of the Commission on paragraph 5 of the said Resolution which is reproduced below:

"5. The revenue loss incurred by M.S.E.B and Mula-Prawara Electric Co-op. society Ltd. Shrirampur due to concessional electricity rates may be compensated by a grant of equivalent amount by the state govt."

Therefore, agricultural consumers are enjoying subsidies as per the said Government Resolution and shall not be affected should the prayers of MSEDCL under the present proceedings be allowed.

7. Shri. Sanjay Sen, Advocate for MPECS submitted that the facts that are being brought into light by the Counsel of MSEDCL are subject matter of appellate proceedings pending before the Appellate Tribunal for Electricity ("ATE").

8. The Commission enquired of Shri. Deepa Chawan as to whether MSEDCL can submit any documentary evidence substantiating that MPECS has received appropriate grants from GoM, as per the cited Government Resolution dated May 27, 2005. Smt. Deepa Chawan submitted that MPECS has filed their affidavit in the proceedings pending before the ATE, wherein they have admitted that appropriate funds have been received by MPECS from the GoM.

9. It was submitted by Smt. Deepa Chawan that MSEDCL cannot be required to continually cross-subsidise the consumers of MPECS. It was strongly submitted that MPECS have completely neglected the directions of the Commission, as given during earlier instances, and the directions issued by the GoM, so far as payment of arrears to MSEDCL is concerned. MPECS have flouted all such directions and totally disregarded the observations of the High Court, Bombay. It was submitted that at present, MSEDCL is largely suffering due to the continual lapses on the part of MPECS to pay the arrears of MSEDCL.

10. The Commission further enquired of Smt. Deepa Chawan whether any documentary evidence as regards whether MPECS has received any grants from the GoM would be essential for adjudication of the present proceedings, considering the volume of the arrears that are due. Smt. Deepa Chawan submitted that the said information is not available with MSEDCL. However, MSEDCL shall file on affidavit necessary evidence concerning the grants/ compensations received by MSEDCL from GoM, in terms of the

cited Government Resolution dated May 27, 2005. The Commission observed that it needs to be ascertained whether MPECS has paid/passed on to MSEDCL, any amounts corresponding to the amounts received as compensation from the GoM. It was submitted by Smt. Deepa Chawan that MSEDCL has not received any such amounts. In this regard, Smt. Chawan submitted that MSEDCL has requested the GoM in writing to directly distribute the compensation amounts to MSEDCL.

11. Referring to the affidavit filed by MPECS on August 13, 2007, Smt. Deepa Chawan submitted that the stand of MPECS that the present proceedings should be stayed in view of the appellate proceedings pending before the ATE, should be rejected. It was submitted by Counsel that the appeals that are pending before the ATE are related to certain tariff orders passed by the Commission. Referring to paragraph 3 of the said affidavit, Counsel submitted that Appeal Nos. 24 of 2007, 33 of 2007 and 101 of 2007 have been adjourned for further hearing on September 5, 2007. Referring to the reliefs sought by MPECS under the said appellate proceedings, Smt. Chawan contended that none of the said reliefs relate to the dues and arrears of MSEDCL. It was strongly submitted that the Commission should countenance the present proceedings as the ATE is not seized with the issues concerning the present proceedings. Referring to paragraph 4 of the said affidavit, it was submitted by Counsel that the Commission's being impleaded in the said appellate proceedings shall not amount to 'legal and procedural bias' as has been contended therein. Referring to paragraph 9 of the said affidavit, Counsel submitted that the contentions of MPECS thereunder is in the nature of an admission that an enquiry is essential to ascertain the volume of past arrears.

12. Smt. Deepa Chawan submitted that the present matter merits admission and the Commission should initiate necessary steps in terms of either Section 19 or Section 24 of the EA 2003, as per the discretion of the Commission.

13. Shri. Sanjay Sen, Advocate for MPECS, submitted that the contentions of MPECS under paragraph 4 to their affidavit is such that the present proceedings may suffer from legal and procedural bias as the Commission, in the capacity of a respondent, has filed counter affidavit in the appellate proceedings pending before the ATE. It was submitted that the hearing of the present proceedings should be deferred till the ATE passes judgment on the said appellate proceedings. It was contended that if the license of MPECS is revoked under the present proceedings, MPECS would be incapacitated to carry the said appellate proceedings before the ATE, in the capacity of a distribution licensee. Such would defeat the ends of justice. Counsel submitted that the Government Resolutions that have been relied upon by MSEDCL and all issues connected therewith, are currently pending adjudication before the ATE. The GoM is also a respondent in the said appellate proceedings. It should be judicious that the present matter be adjourned till the disposal of the appellate proceedings by the ATE. It was submitted that the present matter may at the most be heard on September 5, 2007, on which day all the appellate proceedings related with the present proceedings have been fixed for hearing.

14. Counsel Shri. Sanjay Sen further submitted that the present petition does not merit admission. The present proceedings are recovery proceedings. Reliefs under the

provisions of Section 19 or Section 24 of the EA 2003 cannot be interchangeably sought for. Counsel added that MSEDCL has sought collateral of the receivables with the RLC, and proceedings under Section 19 cannot be done with a collateral. Counsel further submitted that it is most essential that the GoM be impleaded in the present proceedings. Smt. Deepa Chawan referred to the present petition and submitted that the GoM has been impleaded as a respondent. The Commission observed that the GoM has been put to notice of the present proceedings.

15. Shri. Sen submitted that the basic relief of MSEDCL is the payment of arrears from MPECS. MPECS are presently preparing a compromise plan to quantify and settle the dues of MSEDCL. Thus, the present matter should be kept in abeyance.

16. Smt. Deepa Chawan submitted that the present proceedings are not confined to the reliefs sought under the third prayer. Shri. Sanjay Sen enquired of Smt. Chawan whether MSEDCL desires not to press for the third prayer. Smt. Chawan submitted that the third prayer in the petition is not desired to be dropped by MSEDCL. Counsel Smt. Deepa Chawan submitted that proceedings under Sections 19 or 24 of the EA 2003 require a series of enquiries and investigations. The present matter may thus be presently admitted and not be kept in abeyance. Admission of the present matter shall not prejudice MPECS to carry the appellate proceedings in the capacity of a distribution licensee.

17. The Commission observed that the present matter shall not be kept in abeyance or admitted at the present juncture. MPECS should file required data on the compensation that have been received in terms of the Government Resolution dated May 27, 2005 and MSEDCL may also file additional affidavit.

The hearing of the present matter was adjourned thereafter.

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List of Persons present at the hearing on August 21, 2007

1. Shri. Shridhar Prabhu, Manager, M/s. Enercon.
2. Shri. G. Srinivasa Rao, Addl. Manager, M/s. Reliance Energy Limited.
3. Shri. Niraj Kumar, Consultant, Maharashtra Energy Development Agency.
4. Smt. Deepa Chawan, Counsel for MSEDCL.
5. Shri. R.V. Masurekar, Advocate for MSEDCL.
6. Shri. S.G. Bharati, EE, MSEDCL.
7. Shri. S.K. Dhabade, MSEDCL.
8. Shri. R.M. Gole, SE, MSEDCL.
9. Shri. Sanjay Sen, Advocate for MPECS.
10. Shri. V.K. Pandit, MD, MPECS.
11. Shri. S.D. Sonawane, Statistician, MPECS.
12. Shri. S.B. Galande, Law Officer, MPECS.
13. Shri. R.V. Dandapur, Engineer, MPECS.
14. Shri. Pradeep Kamal, Manager, M/s. Synergy Global