

RECORD OF PROCEEDINGS

DATE OF HEARING : July 31, 2007 at 15.00 hrs
CASE No. : 24 of 2007
PETITIONERS : Maharashtra Rajya Veej Grahak Sanghatana
("MRVGS")
MATTER : Petition filed by MRVGS seeking review of the
Order dated May 17, 2007 in Case No. 82 of 2006
QUORUM : Chairman, Member-Technical, Member-Finance

MRVGS filed a Petition dated June 27, 2007 seeking review of the Order dated May 17, 2007 in Case No. 82 of 2006. The Commission scheduled the admissibility hearing in the matter for July 31, 2007 in the presence of consumer representatives authorized on a standing basis under the Electricity Act ("EA 2003"). Notices were issued accordingly.

2. At the hearing held on July 31, 2007, Shri. Pratap Hogade, President- MRVGS, submitted that MSEDCL has not complied with the specific directions provided under the Order dated May 17, 2007 in Case No. 82 of 2006 (in the matter of Complaint filed by MRVGS seeking refund of ORC charges and cost of meter). It was submitted that on a personal enquiry made by Shri. Pratap Hogade, MSEDCL denied to provide an update on the extent of compliance directed under the said Order dated May 17, 2007. Shri. Hogade submitted copies of bills raised on a residential consumer and an industrial consumer which stand proof to demonstrate that MSEDCL has been demanding amounts for laying cable and installing transformers, while providing supply. Such acts on the part of MSEDCL are in total disregard to Sections 43 (2), 46 and 50 of the EA 2003, the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005, and the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, ("**Supply Code**"), especially Regulations 3.3.3, 3.3.4 thereof. It was submitted that post the operation of the Supply Code (i.e. from January 20, 2005) charges towards creation of infrastructure from the sub-station to the distribution mains nearest to the premises of the applicant requisitioning supply, can be charged by MSEDCL only in the case of providing dedicated distribution facility or providing capacity augmentation. Shri. Pratap Hogade submitted that from January 20, 2005 onwards, MSEDCL has levied ORC charges in atleast 1100 instances and ORCP charges in atleast 63 instances, while providing supply. Shri. Pratap Hogade submitted that in terms of the Order dated May 17, 2007, MSEDCL is required to refund amounts collected towards ORCP as ORCP is a head-based charge under the ORC scheme. It was submitted that though certain field officers of MSEDCL seek to differentiate between ORC and ORCP, the said head-based charges are in reality, identical. Shri. Pratap Hogade further submitted that the Commission should verify the compliance report that may be submitted by MSEDCL and reject the contentions of MSEDCL, if any, that refund of amounts collected under the ORC scheme post the operation of the Supply Code, is not possible owing to financial constraints.

3. Smt. Deepa Chawan, Counsel for MSEDCL, submitted that under the present Review Petition, the Petitioners have sought for retrospective operation of the Order

dated September 8, 2006 in Case No. 70 of 2005 (in the matter of approval of the Schedule of Charges for MSEDCL). Counsel further submitted that under Regulation 18.4 of the Supply Code, the existing schedule of charges was made to be in force until approval of new schedule of charges under Regulation 18.1 of the Supply Code, in terms of the EA 2003. Regulation 18.4 of the Supply Code has upheld the well settled rationale that delegated legislation shall not be given any retrospective operation as substantive rights of parties be affected. Reference was made to the observation of the Hon'ble Supreme Court in the judgment reported under AIR 1995 SC 1012.

4. The Commission enquired of Counsel as to the veracity of the submissions of Shri. Pratap Hogade as regards the levy of ORC and ORC-P under the ORC scheme was not sanctified under the schedule of charges that existed prior to the operation of the Order dated September 8, 2006. Shri. Pratap Hogade submitted that under the Order dated August 10, 2004 in Case No. 29 of 2003 (in the matter of SLC charges and ORC scheme) it was observed as hereunder:

“10. The Commission observed that this scheme existed earlier for HT consumers. They were given refund in their tariffs. For 10 years, this was the scheme and the money was refunded through their bills. The capital cost of the infrastructure was advanced by prospective consumers in whatever form MSEB wanted it. After sometime, consumers got a refund through their tariff. The issue is whether the Commission is going to look into all this in the light of the 1999 case (2000 tariff Order) observations, and whether it applies only to a particular case or all other cases? The Commission also observed that, at this stage, the limited question is that of maintainability of the Petition, and whether MSEB have increased the charges under the ORC scheme after the Commission came into existence. Counsel for MSEB submitted that what is recovered is the capital expenditure. There was no formal scheme as such....”

It was contended by Shri. Pratap Hogade that all capital costs incurred towards creation of infrastructure from the sub-station to the distribution mains nearest to the premises of the consumer should be totally borne by MSEDCL. MSEDCL is in a position to recover the said capital costs from its ARR and such would not amount to any loss for MSEDCL.

5. The Commission observed that the validity of the ORC scheme lies in its codification. Shri. R.B. Goenka, Vidarbha Industries Association, submitted that in terms of Regulation 21 of the Supply Code, provisions of the said Code shall be read and construed as being subject in all respects to the provisions of the EA 2003 and to the provisions of any other applicable law relating to the supply of electricity for the time being in force. The Commission should consider justifying the implementation of the ORC scheme in terms of Sections 42, 43(2), and 46 of the EA 2003. The present Petition seeks to identify the costs that may be legitimately charged by MSEDCL, in terms of the Supply Code and the EA 2003, while providing supply. It was contended that Regulation 18.4 of the Supply Code is related with the consistent provisions of the Supply Code whereas Regulation 19.1 is related to the inconsistent provisions thereof. The clear

wording of Regulation 19.1 of the Supply Code should be considered by the Commission. Shri. Goenka referred to the provisions under Sections 174 and 185 of the EA 2003 and submitted that in terms of the said sections, all schemes and schedule of charges existing prior to the operation of the EA 2003 should not have any effect post the operation of the Supply Code and should be deemed to be ineffective, if found inconsistent with the said Supply Code. Shri. Goenka referred to the observation of the High Court of Judicature of Bombay (Nagpur Bench) on May 4, 2007 while disposing of 11 Writ Petitions, wherein sufficient clarifications have been provided as to the non-applicability of conditions of supply prevalent under the Indian Electricity, 1910 but inconsistent with the EA 2003. Reference was also made to the case of a consumer who has borne expenditures towards service line charges, which is essentially to be borne by MSEDCL, and was thereafter required to pay charges towards service line charges under energy bills. Shri. Goenka submitted that the acts of MSEDCL in the levying of (i) ORC charges and (ii) collecting costs towards laying of service lines, post the operation of the EA, 2003 have been totally unlawful. MSEDCL should be thus directed to refund all such amounts together with interest at least from the date of notification of the Supply Code. In this regard, it was further submitted that ORC charges are basically charges levied towards the laying of service lines.

6. The Commission directed Smt. Deepa Chawan and Shri. Goenka to submit a certified copy of the judgments that have been referred to in support of their respective submissions.

7. The Commission observed that adjudication of the present proceedings requires MSEDCL to apprise as to whether the levy of ORC, ORCP and other head based charges under the ORC scheme, as was prevalent *ante* the EA regime, was approved under applicable law. MSEDCL should submit written submissions in this regard. It was further observed by the Commission that if the infrastructure, for which ORC charges were purportedly collected, amounted to MSEDCL's net assets, allowance of 16% return of equity amounts to double gain in favour of MSEDCL.

8. The Commission enquired of MSEDCL as to the extent of compliance that has been made in terms of the Order dated May 17, 2007 in Case No. 82 of 2006. Smt. Deepa Chawan submitted a compliance report for the consideration of the Commission and admitted that no steps have been taken by MSEDCL towards refund of ORCP charges. The Commission observed that ORCP charges are head-based charges akin to ORC charges and should be refunded by MSEDCL in compliance of the Order dated May 17, 2007 in Case No. 82 of 2006. Smt. Deepa Chawan submitted that MSEDCL has submitted a letter dated May 25, 2007 seeking certain clarifications of the said order dated May 17, 2007. The Commission observed that MSEDCL should submit a detailed Clarificatory Petition for the same on which reasonable opportunity of hearing should be provided to the Petitioners in Case No. 82 of 2006 and consumer representatives. Smt. Chawan further submitted that MSEDCL should be provided the liberty to submit a detailed compliance report of the Order dated May 17, 2007 in Case No. 82 of 2006, considering that certain information with respect to collection of amounts towards ORC is awaited. The Commission observed that MSEDCL should be initiating necessary steps expeditiously.

9. Shri. Shantanu Dixit, Prayas (Energy Group), submitted that MSEDCL has been lax in complying with the said Order dated May 17, 2007 considering that at the hearing held on April 3, 2007 in Case No. 82 of 2006, the Director (Operations) of MSEDCL had undertaken to refund all ORC charges within two weeks. Shri. Santanu Dixit further submitted that MSEDCL has even not taken expeditious steps during the period of one month from the date of the speaking order in Case No. 82 of 2006 (at the hearing held on April 17, 2007) and the date of issuance of written order (May 17, 2007). The adverse financial implications of this lackadaisical delay should be strictly considered by the Commission.

10. Dr. Ashok Pendse, Mumbai Grahak Panchyat, submitted that if financial constraints are the reason for MSEDCL not complying with the Order dated May 17, 2007, MSEDCL should have submitted thus. However, MSEDCL contending that the Order dated May 17, 2007 has not been fully complied with due to operational difficulty, is demonstrative of the negligence with which MSEDCL functions. This negligence which has continued for the last three months (May, 2007 to July 2007) sufficiently establishes a willful intent of non-compliance in terms of Section 142 of the EA 2003.

11. The Commission observed that MSEDCL should not delay refund of ORC amounts on the pretext that information of the total amounts collected towards ORC is awaited. The Commission further observed that refund of amounts collected under the ORC scheme (whether under the nomenclature 'ORC', 'ORCP' or any other nomenclature) post the operation of the Order dated September 8, 2006 in Case No. 70 of 2005) should not be delayed by MSEDCL on the plea that a Clarificatory Petition on the import of the order dated May 17, 2007 may be filed by MSEDCL. Such a Clarificatory Petition may only be a parallel process vis-à-vis compliance of the Order dated May 17, 2007. It was further observed by the Commission that MSEDCL should not await the disposal of the present proceedings to effect compliance of the said Order dated May 17, 2007. The Commission directed that within a period of **two weeks** from July 31, 2007:

- (i) Vidarbha Industries Association should submit a certified copy of the judgments passed by the Hon'ble High Court of Bombay (Nagpur Bench), as referred by Shri. R.B. Goenka in his submissions;
- (ii) MSEDCL should submit a certified copy of the judgment passed by the Hon'ble Supreme Court, as referred by Smt. Deepa Chawan in her submissions;
- (iii) MSEDCL should submit full compliance report in terms of the Order dated May 17, 2007 in Case No. 82 of 2006.

The admissibility hearing in the matter concluded thereafter.

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List of Persons present at the admissibility hearing on July 31, 2007

1. Smt. Deepa Chawan, Counsel for MSEDCL.
2. Shri. Pratap Hogade, President, Maharashtra Rajya Veej Grahak Sanghatana.
3. Shri. R.B. Goenka, President, Vidarbha Industries Association.
4. Shri. Shantanu Dixit, Prayas (Energy Group).
5. Dr. Ashok Pendse, Mumbai Grahak Panchyat.
6. Dr. S.L. Patil, Thane Belapur Industries Association.