

## **RECORD OF PROCEEDINGS**

***Suo Motu* hearing in the matter of nomination of co-ordinating officers by Maharashtra State Electricity Distribution Company Limited (“MSEDCL”), for facilitating field visits within its license area.**

DATE OF HEARING : July 31, 2007 at 11.20 hrs

CASE No. : 32 of 2007

MATTER : In the matter of nomination of co-ordinating officers by MSEDCL for facilitating field visits within its license area.

QUORUM : Chairman, Member-Technical, Member-Finance

Shri. Mirajkar and Shri. Dilip G. Bagwe, Advocates, appeared on behalf of MSEDCL.

2. The Commission observed that the provisions of Section 96 of the Electricity Act 2003 (“EA 2003”) has not been invoked by the Commission for entry and seizure. It was observed that the reason for the proposed field visits are to verify the compliance and implementation of various directives issued by the Commission under its various orders as also to verify compliance by the distribution licensee (i.e. MSEDCL) of rules and regulations made by the Commission under the EA 2003. Such field visits can only be made effective with the spirit of co-operation from MSEDCL and its officers, as also with similar support from other distribution licensees in relation to field visits in their respective licence areas. It was further observed by the Commission that MSEDCL would be privy to the information collected/ obtained through the exercise of such field visits.

3. Shri. Mirajkar submitted that the letters issued by the Commission refer to Regulation 82 of the MERC (Conduct of Business) Regulations, 2004 and the power of the Commission with regard to search and seizure. Shri. Mirajkar submitted that the powers vested upon the Commission under the said Regulation are related to the powers of investigation under Section 128 of the EA 2003. To this, it was clarified by the Commission that neither is the Commission initiating any of its powers under Section 96 of EA 2003 with regard to entry and seizure nor are the proposed field visits by Bureau Veritas and Central Power Research Institute (CPRI) purported to be the investigation referred to in Section 128 of the EA 2003. Bureau Veritas and Central Power Research Institute are not the “Investigating Authority” referred to in Section 128 as the Commission has not invoked the provisions of the said Section.

4. Shri. Mirajkar submitted that the powers and functions of the Commission cannot be delegated under Section 97 of the EA 2003 on any artificial / juristic person. It was submitted that the Commission may delegate its powers and functions under Section 96 on natural persons. It was contended that Bureau Veritas and Central Power Research Institute are corporate entities and delegation of any function of the Commission on the said entities, in terms of the Section 97 of the EA 2003, would not be justified. It was further submitted that neither the names of the persons belonging to the above agencies who would be actually responsible for undertaking field visits, nor any particulars pertaining to their qualifications and experience, have been clearly specified in the various letters issued by the Commission to MSEDCL. Shri. Mirajkar submitted that the power ascribed to the Commission under Section 97 of the EA 2003 is not disputed by MSEDCL. It was clarified that the contention of MSEDCL is that the said power should be exercised in consonance with the objective of Section 97. Bureau Veritas and Central Power Research Institute cannot sub-delegate the functions that have been delegated by the Commission upon them.

4. The Commission observed that under Section 97 read with Section 2(49) certain powers and functions of the Commission may be delegated to *inter alia* any person, which may be any company or artificial juridical person. Central Power Research Institute is a public undertaking of the Central Government and is well known for its credentials in power sector including carrying out of effective field inspections.

5. Shri. Mirajkar submitted that the Commission, for the purposes of any inquiry or proceedings, has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of certain matters as mentioned in Section 94. The proposed field investigations and fact-finding exercise should be conducted in exercise of the powers of the Commission under Section 94 of EA 2003. Shri. Mirajkar submitted that all proceedings before the Commission are deemed to be judicial proceeding as mentioned in Section 95 of the EA 2003. The Commission observed that field investigations/ visits in the geographically dispersed operational areas of MSEDCL are necessary in order to verify whether the directives issued by the Commission under its various orders particularly concerning the aspects of load shedding protocol, Automated Meter Reading, meter installation, capacitor installation and similar issues have been implemented by MSEDCL or not. The Commission also observed that the exercise of field investigations/ visits shall be beneficial to MSEDCL as well. The need to conduct field visits has also been pointed out on various occasions by consumers and consumer representatives. Further, the Commission does not intend to interfere with the management and governance of the Licensee.

6. Dr. Ashoke Pendse, representing Mumbai Grahak Panchayat (an organisation authorized to represent interests of consumers under Section 94(3) of EA 2003), submitted that the Commission is empowered under Regulation 82 of the MERC (Conduct of Business) Regulations, 2004, to appoint any person to collect, study, investigate or furnish information with respect to any matter within the jurisdiction of the Commission. MSEDCL should not question the credence of Bureau Veritas or Central Power Research Institute if the Commission appoints them as agencies designated to

collect, study, investigate or furnish information. Central Power Research Institute has expertise comparable with international standards and cannot be questioned by MSEDCL solely on the ground of it not being a natural person. Dr. Pendse submitted that the term 'person' under Section 2(49) of the EA 2003 includes any company or body corporate or association or body of individuals, whether incorporated or not, or any artificial juridical person and therefore both Bureau Veritas or Central Power Research Institute are within the scope of this definition. When Section 2(49) is read with Section 97, it would become clear that the Commission may delegate certain of its powers and functions to Bureau Veritas or Central Power Research Institute. Dr. Pendse further submitted that the exercise of carrying out field visits is pending since a long period of time owing to frivolous and baseless issues raised by MSEDCL. Dr. Pendse referred to the Writ Petition filed by MSEDCL (lodging No. 1594 of 2007) seeking urgent ad-interim reliefs restraining field inspections and submitted that on July 30, 2007, the Hon'ble High Court of Judicature, Bombay was pleased not to allow urgent reliefs as prayed for by MSEDCL. Dr. Pendse submitted that the need to carry out field inspections in the distribution license area of MSEDCL is of critical importance inasmuch as to verify the implementation of various directives issued by the Commission, especially the directives with regard to load profile, installation of capacitors and load shedding protocol. He further submitted that the field inspections have also become necessary in view of the innumerable complaints raised by consumers with regard to poor quality of electricity supply by MSEDCL.

7. The Commission observed that the issues raised by MSEDCL under their aforesaid Writ Petition before the Hon'ble High Court of Judicature, Bombay, are not an issue in the present proceedings.

8. Shri. Shantanu Dixit, representing Prayas Energy Group (an organisation authorized to represent interests of consumers under Section 94(3) of EA 2003), pointed out that the Commission from time to time has issued directions applicable to MSEDCL. These directions concern diverse matters. MSEDCL has either not opposed the directions so issued by the Commission, or have not succeeded in challenging the vires thereof. Therefore, currently, all directions issued by the Commission are in force and should be implemented by MSEDCL. He further submitted that under the present proceedings, the Commission has for the interest of consumers, desired to initiate field visits for collection of information so as to be able to verify whether its directions as well as rules and regulations made under EA 2003, are being complied with by MSEDCL. In clear terms, it is not comprehensible as to what are the reasons for MSEDCL in preventing or delaying the proposed field inspections. He submitted that MSEDCL is a public institution within the scope of the Right to Information Act, 2005 and therefore, should be willingly co-operating with the Commission with regard to the initiation of field inspections, collection of data, information, etc. The approach of MSEDCL, on the contrary, is suggestive of the fact that MSEDCL is trying to hide information relating to gross negligence of not complying with the directives of the Commission and which have adversely affected the interests of millions of consumers.

9. Shri. R.B. Goenka representing Vidarbha Industries Association (an organisation authorized to represent interests of consumers under Section 94(3) of EA 2003), endorsed the submissions made by Dr. Ashoke Pendse and Shri. Shantanu Dixit and submitted that field inspections should also be targeted to determine the compliance of MSEDCL with respect to the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005, and further, for the cross-verification of any compliance report submitted by MSEDCL as required under the said regulations. Shri. Goenka also submitted that the Commission needs to verify the level of compliance by MSEDCL of the Order of the Commission dated September 8, 2006 passed in Case No. 70 of 2005 (in the matter of approval of the Schedule of Charges for MSEDCL).

10. Dr. S.L. Patil representing Thane Belapur Industries Association, (an organisation authorized to represent interests of consumers under Section 94(3) of EA 2003), pointed out that MSEDCL has for the past three years not complied with the directives related to installation of capacitors and submission of realistic projections/data. He further submitted that the tariff of MSEDCL is required to be determined on the basis of accurate data submitted by MSEDCL. However, the fact of the matter is that MSEDCL submits inaccurate data for the purposes of tariff determination by the Commission. It is necessary therefore that the accuracy of the data should be verified by the Commission and if for that reason the Commission needs to initiate and hold field inspections, the same should be done. He submitted that the repeated incidences of harsh power trippings and inefficient supply of electricity (as known to all) are demonstrative of the malfunctioning of MSEDCL and severe lapses on its part. Field inspections in this regard would be beneficial for both the interests of consumers as well as MSEDCL, as it would be informative on the true causes behind MSEDCL's failure in providing quality supply, despite its financial and infrastructural resources.

11. Shri. Pratap Hogade representing Maharashtra Rajya Veej Grahak Sanghatana, submitted that there has been a tariff hike owing to the non-compliance by MSEDCL of the directives of the Commission issued on the aspects of arresting distribution losses and incidences of pilferage, maintaining certain specified standards of performance, implementing a load shedding protocol, installation of capacitors, energy conservation, demand side management, metering, collection of scheduled charges, and similar parameters.

12. Dr. Ashoke Pendse pointed out that usually MSEDCL complies with those directions issued by the Commission that pertains to a certain complainant or group of complainants. Thus, only a particular bracket of consumers may be protected as compliance is never uniform with respect to general directions.

13. Shri. Shantanu Dixit further submitted that before the Commission initiates any penal action, MSEDCL should be informed of the data collected after field inspections and reasonable opportunity should be provided to MSEDCL to justify any negligence/non-compliance. MSEDCL should not obstruct the process of field investigation on the

mistaken footing that actions would be taken against MSEDCL without their not being privy to the data that is collected.

14. Shri. Mirajkar reiterated that the EA 2003 vests power with the Commission to initiate enquiry and investigation. Further, MSEDCL is not opposing the said process. Referring to the letters dated May 9, 2007 and July 18, 2007 issued by the office of the Commission, and further referring to the submissions made by the abovenamed consumer representatives, Counsel contended that the proposed field inspections, though described as a 'fact-finding' exercise, is substantially an investigation process within the scope of Section 128 of the EA 2003. Counsel submitted that Bureau Veritas has no relation to power sector and hence MSEDCL would not be comfortable if the said agency is appointed to undertake field inspections in MSEDCL license area. The Commission clarified that Bureau Veritas will not be engaged to conduct field inspections in the license area of MSEDCL, as desired by MSEDCL, and Central Power Research Institute, which is a Government undertaking shall be carrying out the field investigations and visits. It was further clarified by the Commission that the field inspections/ visits cannot in any case be on a mass scale and it is intended that the data and information pertaining to certain critical directions given under tariff Orders applicable to MSEDCL, be collected on sample basis. The Commission further clarified that the requisition to nominate co-ordinating officers by MSEDCL is with the objective that such co-ordinating officers of MSEDCL share the requisite data and information with the agency that is carrying out the visits at field level. Therefore, no data or information will be collected without the knowledge of MSEDCL. It was further clarified that this means that there is neither any roving enquiry nor any sinister design. The Commission is empowered to verify through any person the compliance of its Orders and directions thereunder.

15. The Commission observed that the present hearing has been held solely for understanding MSEDCL's submissions as well as to clarify that the objective of the field visits is to verify compliance of directions passed by the Commission and not to invoke Section 96 or Section 128. The field inspections are not proposed to be initiated only for MSEDCL but for other Distribution Licensees in the State too. The inspections are proposed to be carried out in the presence of MSEDCL's representatives, co-ordinating officers who shall share data and information with the agency that will undertake field visits.

16. Counsel for MSEDCL submitted that as CPRI has a direct relation with power sector, the said agency would be appropriate to undertake the field visits. He, however, submitted that he would need to obtain instructions. The Commission noted that MSEDCL may take specific instructions from its management / give instructions to Counsel and thereafter, make submissions before the Commission again.

The hearing in the matter was adjourned thereafter.

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

1. Shri. A.J. Despande, MSEDCL.
2. Shri. Pratap Hogade, Maharashtra Rajya Veej Grahak Sanghatana.
3. Shri. Mirajkar, Counsel of MSEDCL.
4. Shri. Dilip G. Bagwe, advocate of MSEDCL.
5. Shri. Ashoke Pendse, Mumbai Grahak Panchayat.
6. Shri. Santanu Dixit, Prayas (Energy Group).
7. Shri. S.L. Patil, Thane Belapur Industries Association.
8. Shri. R.B. Goenka, Vidharbha Industries Association.
9. Shri. Dilip Dumbre, MSEDCL.
10. Shri. S.R. Patil, MSETCL.
11. Shri. Manohar Kulkarni, Laghu Udyog Bharati.
12. Shri. Ashwin Treasurer, Laghu Udyog Bharati.