

RECORD OF PROCEEDINGS

DATE OF HEARING : November 21, 2007 at 12.00 hrs
CASE No. : 56 of 2007
PETITIONERS : Maharashtra Rajya Veej Grahak Sanghatana
("MRVGS")
RESPONDENTS : Maharashtra State Electricity Distribution Company
Limited ("MSEDCL")

MATTER : Petition filed by MRVGS seeking refund as directed
under the Order dated May 17, 2007 in Case No. 82
of 2006, of charges collected under the Outright
Contribution Scheme ("ORC charges"), and such
other head-based charges at variance from the
Commission's Order dated September 8, 2006 in
Case No. 70 of 2005, and amendment/correction of
directives issued by MSEDCL under the Circular
dated September 3, 2007 towards refund of meter
cost

CORAM : Chairman and Members

MRVGS filed a Petition on November 12, 2007 seeking refund as directed under the Order dated May 17, 2007 in Case No. 82 of 2006, of charges collected under the Outright Contribution Scheme ("ORC charges"), and such other head-based charges at variance from the Commission's Order dated September 8, 2006 in Case No. 70 of 2005, and amendment/correction of directives issued by MSEDCL under the Circular dated September 3, 2007 towards refund of meter cost. The Commission scheduled the hearing in the matter for November 21, 2007 in the presence of four consumer representatives authorised on a standing basis under the Electricity Act, 2003 ("EA 2003"). Notices were issued accordingly.

2. At the hearing held in the matter on November 21, 2007, Shri. Pratap Hogade, President-MRVGS, appeared. Shri. Ravi Prakash, Counsel, appeared for MSEDCL along with Shri. U.G. Zalte, Chief Engineer (Distribution), MSEDCL. Dr. Ashok Pendse appeared on behalf of Mumbai Grahak Panchayat.

3. Shri. Ravi Prakash requested for an adjournment of the hearing citing the late receipt of the Commission's Notice dated November 7, 2007 by MSEDCL on November 13, 2007. It was submitted that the concerned department of MSEDCL received the said Notice on November 17, 2007 due to which appropriate instructions have not been received by Shri. Ravi Prakash from MSEDCL. It was further submitted that Shri. U.G. Zalte, who shall be examining issues connected with the Outright Contribution Scheme, has arrived from Nagpur on November 20, 2007, where he was present to attend the

Winter Assembly Sessions of the Government of Maharashtra. It was submitted that issues connected with ORC charges are required to be examined by senior officials of MSEDCL, most of whom are pre-occupied with the said Assembly Session. A detailed analysis on the concept of the Outright Contribution Scheme and a compliance report on the refund of ORC charges as per the Order dated May 17, 2007 would be submitted within a period of one month. The Commission observed that adjournment as sought for shall not be granted.

4. Shri. Prakash submitted that so far as the contentions of MRVGS relate to the amendment of the Circular dated September 3, 2007, inasmuch as to cause refund of meter cost in one go, the same shall be done. The Circular dated September 3, 2007 shall be accordingly amended within one week, and refund of meter cost shall be made in one go within one month, in case of all consumers. It was further submitted that the contentions of MRVGS that MSEDCL has attempted to mislead the Hon'ble Supreme Court in Civil Appeal No. 4305 of 2007 should be subject matter before the Hon'ble Supreme Court, and should be rejected in the present proceedings.

5. Shri. Pratap Hogade referred to the averments made in Petition. It was submitted that even after the passing of Order dated May 17, 2007 in Case No. 82 of 2006, MSEDCL has not refunded amounts collected towards ORC charges and similar head-based charges under the Outright Contribution Scheme. It was dismaying that this inordinate delay has been even after compliance time as per the Order dated May 17, 2007 was extended for two weeks during the hearing of Case No. 24 of 2007 on July 31, 2007 and further extended on August 27, 2007 for 15 days. The gross negligence of MSEDCL in this regard should be noted by the Commission.

6. Shri. Hogade submitted that the Circular dated September 3, 2007 needs to be amended inasmuch as to cause the refund of meter cost in one go, and not in installments. It was submitted that the said method of refund of meter cost through installment, as per the said Circular, was not sanctified through any prior approval of the Commission.

7. Shri. Hogade submitted that on personal representations made at the Head Office, MSEDCL, he was informed by the Managing Director, MSEDCL; the Chief Engineer (Commercial), MSEDCL and the Chief Engineer (Distribution), MSEDCL that the refund of ORC charges has been stayed by the Hon'ble Supreme Court. Thereafter, on perusal of the appeal memo as filed by MSEDCL before the Supreme Court, it was ascertained that the said stand of MSEDCL is misleading. Referring to the appellate proceedings initiated by MSEDCL before the Appellate Tribunal for Electricity and thereafter, before the Hon'ble Supreme Court, it was contended that, at present, the recovery of service line charges ("SLC") stands stayed only, and not the refund of ORC charges. If any contrary stand is pressed for by MSEDCL, the Commission should direct MSEDCL to submit the same on affidavit.

8. Shri. Pratap Hogade further submitted that, in essence, the Outright Contribution Scheme was not upheld in the Order dated September 8, 2006 and MSEDCL should not have collected monies towards any charges, which are not covered under its "Schedule of Charges". It was further submitted that as compared to the recovery of ORC charges, recovery of ORC-P charges has not been properly accounted for by MSEDCL, so as to appropriately refund the same back to consumers.

9. Per contra, Shri. Prakash admitted that there is no doubt that issues connected with ORC are not subject matter before the Hon'ble Supreme Court and no stay has been granted on the refund of ORC charges. There is no documentary evidence of any contrary stand of MSEDCL, as alleged by Shri. Hogade. It was submitted that the concept of the Outright Contribution Scheme and the recovery of ORC charges, so far as they overlap with SLC, is under examination before the Hon'ble Supreme Court under Section 46 of the EA 2003. The Outright Contribution Scheme is being elaborately examined by MSEDCL for submission before the Commission also within a period of one month, and clarifications, if any, may be provided by the Commission on the same. Shri. Prakash submitted that as per his instructions from MSEDCL, there is a probability that the Outright Contribution Scheme has been introduced to recover SLC in such cases where supply is being provided as a dedicated distribution facility ("DDF"). The recovery of SLC for DDF do not violate the Commission's Order dated September 8, 2006 in Case No. 70 of 2005 or the Order dated May 17, 2007 in Case No. 82 of 2006. It was submitted that the main difficulty in the introduction of the Outright Contribution Scheme has arisen from the usage of an inappropriate nomenclature, which is 'ORC'. Had the term 'DDF-SLC' or such other explanatory term been used in this regard, the present disputes may not have resulted. However, no conclusive finding on the concept of Outright Contribution Scheme has yet been ascertained and the same is under examination.

10. Refuting the justification as advanced by Counsel on the concept of the Outright Contribution Scheme, Shri. Hogade submitted a note (as prepared by MRVGS) on what comprises of ORC charges, ORC-P charges and costs for DDF, while the hearing was in motion. It was submitted that ORC charges and ORC-P charges are not related with SLC charges. It was submitted that the contention of MSEDCL that ORC is actually the recovery of SLC for DDF may be true for 2% to 3% out of the total cases in which ORC charges have been levied. Almost 95% of the total cases of levy of ORC charges show that ORC has been levied for ordinary supply, and not for the provision of DDF. Referring to the said note, it was further submitted that ORC-P charges constituted of capacity augmentation costs. It was submitted that refund of lawful recovery of SLC for the provision of DDF is not pressed for under the present proceedings.

11. Dr. Ashok Pendse submitted that issues connected with SLC are distinct from issues connected with ORC (the Outright Contribution Scheme).

12. Considering the submissions of Counsel Shri. Ravi Prakash that MSEDCL is currently examining the concept of Outright Contribution Scheme, the Commission directed MSEDCL to intimate in writing the cases where recovery of ORC charges have been made for supply which are not in the nature of DDF. MSEDCL must submit a first list (covering as many such cases possible) within 15 days. The Commission further directed that a detailed analysis of all cases where ORC has been recovered (whether for DDF or otherwise) must be submitted by MSEDCL within one month. This list should detail the nature of supply provided, and the infrastructure, if any, that was laid for provision of supply, from which it shall be ascertainable whether the levy of ORC, in respect of the particular cases, have been for the recovery of SLC for DDF. Further, the Commission observed that it may consider appointing independent auditor to examine these cases, if necessary. The definition of charges under the nomenclature 'ORC' and ORC-P' must be distinctly provided. It was directed that both the said reports must be filed on affidavit, duly notarized, with copies marked to MRVGS and the four authorized consumer representatives.

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List of Persons present at the hearing held on November 21, 2007

1. Shri. Pratap Hogade, Preident-Maharashtra Rajya Veej Grahak Sanghatana.
2. Shri. U.G. Zalte, Chief Engineer (Distribution)-MSEDCL, H.O.
3. Shri. Ravi Prakash, Counsel for MSEDCL.
4. Shri. S.S. Dhande, S.E. (Distribution), MSEDCL, H.O.
5. Dr. Ashok Pendse, Mumbai Grahak Panchayat.