

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 82 of 2006

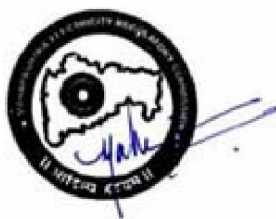
In the matter of
Complaint filed by the Maharashtra Rajya Veej Grahak Sanghatana seeking directions upon MSEDCL to refund monies collected towards Outright Contribution Charges and cost of meter, while providing new connections, post the enforcement of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 and the Order dated September 8, 2006 in Case No. 70 of 2005, and appropriate measures against errant officials.

Dr. Pramod Deo, Chairman
Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: 17th May, 2007

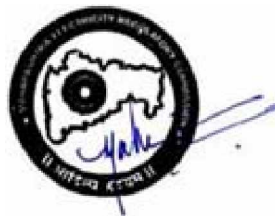
The Maharashtra Rajya Veej Grahak Sanghatana (“**the Complainants**”) filed a complaint on February 28, 2007 seeking refund of monies collected by MSEDCL towards Outright Contribution charges (“**ORC**”) and cost of meter, while giving new connections. It is the contention of the Complainants that pursuant to the enforcement of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (“**Supply Code**”), and thereafter, the Order dated September 8, 2006 in Case No. 70 of 2005 (in the matter of approval of the Schedule of Charges for MSEDCL), MSEDCL cannot charge ORC or amounts towards cost of meter, while releasing new connections. However, MSEDCL have been charging amounts towards ORC and cost of meter in violation of the aforesaid regulations and Order dated September 8, 2006. The Complainants have submitted a copy of a Circular dated June 21, 2005 issued by the office of the Chief Engineer (Distribution)-MSEDCL to (i) Dy. Executive Engineer, MSEDCL; (ii) Chief Engineers (MSEDCL), O&M Zone in field; (iii) Superintending Engineers (MSEDCL), O&M Zone in field; and (iv) Executive Engineers (MSEDCL), O&M Zone in field – regarding the modus of recovering Supervision charges at 15% of labour charges only, and directions to refund excess amounts collected as per the conditions of supply prevalent before the Supply Code came into effect. The Complainants have also submitted a similar Circular dated December 12, 2005 issued by the office of the Technical Director-MSEDCL, under the hand of the Executive Director-1, to (i) Superintending Engineer-MSEDCL, O&M Circle, Kolhapur, Sangli, Solapur and Satara; (ii) Executive Engineer, O&M Division, Ichalkaranji. The issuance of the aforesaid Circulars



substantiate that officials of MSEDCL were informed that with effect from January 20, 2005, costs towards requisition of supply would not be estimated under the ORC scheme or in violation of the Supply Code. However, as per the Quotation dated January 11, 2007 issued by the Assistant Engineer, MSEDCL, Sub-Division-Talegaon to the Chairman, Devang Vishesh Magaswargiya Ready Made Garments Sanstha, Wadwani, ("**Devang Sanstha**") ORC for an amount of Rs. 15,438/- and cost of meter for an amount of Rs. 22,400/-, were levied towards requisition and release of supply and such amounts were collected by MSEDCL vide receipt dated January 16, 2007. The Complainants have contended that, as in the case of Devang Sanstha, various new consumers have paid amounts towards ORC and cost of meter to avail electricity on urgent basis. The actions of MSEDCL in collecting amounts towards ORC and cost of meter have been in flagrant disregard of the aforesaid Supply Code and the Order dated September 8, 2006 passed by the Commission. The Complainants have also contended that MSEDCL should take appropriate measures to incorporate expenses towards transmission, expansion, or up-gradation in their ARR and refund the amounts collected towards ORC and cost of meter to such consumers from whom the amounts have been erroneously collected. Apart from the aforesaid contentions, the Complainants have also contended that various consumers have borne costs towards dedicated distribution facility ("DDF") while availing supply of power. Refund of the depreciated value of amounts spent on DDF, under Regulation 3.3.3 of the Supply Code have not yet materialised. The Complainants have sought for a clarification on whether MSEDCL should be directed to refund the depreciated value of amounts collected towards DDF, with effect from January 20, 2005. MSEDCL have not submitted counter pleadings to the present complaint though sufficient time was provided for the same.

2. The Commission admitted the complaint as filed by the Complainants and decided to initiate action against MSEDCL under Section 142 of the Electricity Act, 2003 ("EA 2003"). Vide letter dated March 26, 2007, notice was issued to MSEDCL informing that on April 3, 2007, an opportunity of being heard shall be provided to MSEDCL so as to show cause as to why action under Section 142 of the EA 2003 should not be taken against MSEDCL and their errant officials. Consumer representatives authorised on a standing basis under the EA 2003, were invited to appear in the said hearing.

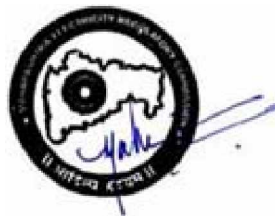
3. On April 3, 2007, Smt. Deepa Chawan, Counsel, was present on behalf of MSEDCL along with Shri. A.D. Palamwar, Director (Operations), MSEDCL and other officials. No consumer representative was present in the said hearing. Smt. Chawan requested an adjournment of the hearing of the complaint owing to the lack of instructions pertaining to the complaint and initiation of corrective action at MSEDCL's end. Shri. A.D. Palamwar tendered an unconditional apology and undertook to initiate corrective action with immediate effect. The Commission directed MSEDCL to submit a detailed compliance report under affidavit, with respect to the directives issued under Order dated September 8, 2006 in Case No. 70 of 2005, within a period of two weeks. The Commission adjourned the hearing of the complaint as prayed for and vide its letter dated April 5, 2007, informed all parties concerned that the said hearing would be held on April 17, 2007, by which date MSEDCL should submit a compliance report, under affidavit, with respect to refund of ORC and cost of meter



which have been collected in default. Consumer representatives authorised on a standing basis under the EA 2003, were again invited to appear in the said hearing.

4. At the hearing held on April 17, 2007, Smt. Deepa Chawan, Counsel, was present on behalf of MSEDCL along with other officials. Shri. Pratap Hogade was present on behalf of the Complainants. No consumer representative was present in the said hearing. Smt. Deepa Chawan tendered an unconditional apology for the errors committed by certain officials of MSEDCL who have inadvertently levied ORC charges and cost of meter to certain consumers even after the issuance of the Order dated September 8, 2006 in Case No. 70 of 2005. Counsel submitted that such errors were not willful and such actions were due to oversight as a majority of the officials of MSEDCL have not been able to comprehend the implementation methodology provided under the Order dated September 8, 2006. Counsel submitted that the Sub-ordinate Engineers' Association of MSEDCL have convened an internal meeting with the Managing Director of MSEDCL, wherein issues concerning implementation of the said order dated September 8, 2006 would be discussed and clarifications be provided. On an enquiry made by the Commission as to whether appropriate instructions on the implementation of the said Order dated September 8, 2006 have been issued to officers of MSEDCL at the zonal level, Counsel submitted that certain clarificatory instructions (in English Language) have been issued to officers of MSEDCL at the circle level on April 13, 2007. The field staff and concerned officers of MSEDCL were expected to gain clarity with respect to the import and the implementation of the Order dated September 8, 2006 within a period of two weeks from April 13, 2007, though no specific time frame has been set out in the said clarificatory instructions as to the date from which the Order dated September 8, 2006 should be implemented. The Commission directed MSEDCL to submit copies of the said clarificatory instructions dated April 13, 2007. The Commission observed that MSEDCL should have issued appropriate instructions/ orders/ circulars to officers and field officers at the zonal level in authenticated Marathi translation, setting out the date of implementation and manner of strict adherence to the Order dated September 8, 2006. The said instructions should further be given adequate publicity for serving the interest of consumers. While on the subject, the Commission observed that the directions issued under the said Order dated September 8, 2006 are not complicated/ difficult for implementation. MSEDCL should have been more cautious and diligent in this respect. The implementation process mentioned in terms of the Order leaves no scope for any kind of misunderstanding or deliberate misinterpretation, as contended by Counsel. The Commission further observed that the Commercial Circular No. 43 dated September 27, 2006 issued by MSEDCL itself post the Order dated September 8, 2006 is comprehensible enough and easy to understand. MSEDCL must refund to all consumers all overcharged amounts that have been collected towards ORC or such other head-based charges, including cost of meter, at variance from the Order dated September 8, 2006.

5. On being enquired by the Commission as to the definition of the charge titled 'CRA', Shri. K.B. Fakir apprised the Commission that 'CRA' is a head-based charge akin to SLC. The Commission observed that field officials of MSEDCL are often not in a position to explain to consumers the abbreviations used/nomenclature adopted, while levying charges, as for example 'CRA'. The Commission observed that the collection of head-based charges in

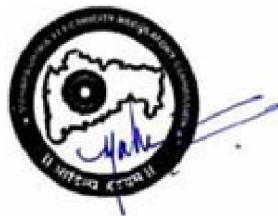


the nature of 'CRA' have also been unlawful. Shri. K.B. Fakir, Electrical Engineer-MSEDCL, Beed Circle, undertook to refund amounts collected from Devang Sanstha, towards ORC charges, CRA and cost of meter, together with interests. The Commission directed MSEDCL to refund to Devang Sanstha, and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests. Due care should be taken while refunding such charges recovered in violation of the Order dated September 8, 2006. The refunding should be made by MSEDCL in a lumpsum and at one go, and not via adjustments in future energy bills.

6. Considering the hearings held in the matter on April 3, 2007 and April 17, 2007, the directions that have been issued to MSEDCL are as follows:

- (i) MSEDCL should submit a detailed compliance report under affidavit, with respect to the directives issued under Order dated September 8, 2006 in Case No. 70 of 2005, within a period of two weeks from the date of issue of this order;
- (ii) MSEDCL should submit a copy of the clarificatory instructions stated to have been issued by MSEDCL- HO to their officers at circle level on April 13, 2007 in the English Language;
- (iii) MSEDCL should re-issue the aforesaid clarificatory instructions in authenticated Marathi translation to their officers at zonal level;
- (iv) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and 'CRA', together with interest, on and from September 8, 2006 (which is the date of effect of the Order dated September 8, 2006 in Case No. 70 of 2005), within a period of one week from the date of issue of this order;
- (v) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts unlawfully collected from Devang Sanstha towards ORC, cost of meter and 'CRA', together with interest within a period of one week from the date of issue of this order.

7. On April 23, 2007, under their Advocates and Solicitors' letter dated April 23, 2007, MSEDCL filed the affidavit of Shri. Nivrati Narisingrao Chinte, Superintending Engineer (O&M) Circle-Beed, dated April 20, 2007. The contents of the said affidavit hold that a sum of Rs. 37,838/- (of which Rs. 15,438/- pertains to amounts collected towards ORC and Rs. 22,400/- pertains to amounts collected towards cost of meter) has been refunded to Devang Sanstha, on April 17, 2007. The photocopy of the receipt certifying the said payment has been attached. The Commission observed that the said affidavit does not declare the refund of (i) amounts collected towards 'CRA' (Rs. 6,500/-), nor (ii) the interest amount on ORC, cost of meter and 'CRA' collected from Devang Sanstha, calculated from the date of collection (which is not mentioned in the said affidavit) upto the date of refund. The



compliance of MSEDCL in this regard has been dismal. It is further being noted with dismay that no compliance report has been submitted by MSEDCL pursuant to the other remaining directives issued as aforesaid.

8. The Commission is of the view that the contentions raised by Counsel of MSEDCL, so far as they relate to collection of ORC, cost of meter and 'CRA' by MSEDCL being incidences of "minor infraction" are simply not tenable. In the proceedings that were before the Commission in Case No. 65 of 2006 (in the matter of determination of Annual Revenue Requirement of MSEDCL for the Control Period from FY 2007-08 to FY 2009-10 and Tariff for FY 2007-08), MSEDCL had submitted a letter, under affidavit, dated April 10, 2007 bearing ref. no. SE/TRC/MYT Tariff Petition/17388 MSEDCL, towards additional submission of data, wherein under Point No. (40) it provided as under:

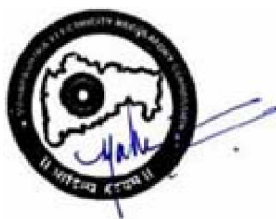
"The amount received towards SLC including service connection charges and ORC is not income but consumer's contribution towards cost of capital assets and this is shown on liabilities side of the Balance sheet. The details of amount received during the period are as under. (Break-up of SLC and ORC on Monthly basis is not available):

(Rs. In Crores)

Sr. No	Particulars	2005-06	2006-07 (upto 31.12.2006)
1	SLC / SCC	226.58	238.70
2	ORC	222.37	373.23
	Total	448.95	611.93

Nevertheless, the Commission has noted the fact that MSEDCL have considered that amounts collected towards SLC, SCC and ORC "is not income but consumer's contribution towards cost of capital assets and this is shown on liabilities side of the Balance sheet".

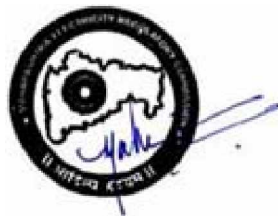
9. Having considered the material placed on record and the oral submissions advanced by the parties, the Commission is of the view that the present complaint has been filed with regard to generic incidences of unlawful collection of ORC and cost of meter and has not been filed to settle a single incidence of unlawful collection, i.e., in respect of Devang Sanstha. Further, MSEDCL has only refunded the principal amount of monies collected towards ORC and cost of meter collected from Devang Sanstha. Refund of principal amounts collected towards 'CRA' and the interest amount on ORC, cost of meter and 'CRA' is yet pending. Based on the lackadaisical nature of compliance shown by MSEDCL, and the grievances that has been committed against the interests of their consumers, the Commission passes the following directions upon MSEDCL which shall be required to be performed by MSEDCL within 15 days from the date of this Order, failing which Section 142 of the EA 2003 shall be invoked on the Managing Director, Director (Operations) and Chief Engineer (Commercial) of MSEDCL:



- (a) MSEDCL should submit a detailed compliance report under affidavit, with respect the directives issued under Order dated September 8, 2006 in Case No. 70 of 2005;
- (b) MSEDCL should submit a copy of the clarificatory instructions issued by MSEDCL- HO to officers at circle level on April 13, 2007 in the English Language;
- (c) MSEDCL should re-issue the aforesaid clarificatory instructions in authenticated Marathi translation to officers at zonal level, wherein strict time-line for refund in terms of this Order shall be clearly provided for, and submit a copy of the same before the Commission;
- (d) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and 'CRA', together with interests, on and from September 8, 2006 (which the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007;
- (e) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of the amount of Rs. 6500/- (collected under the head 'CRA') and the interest amount collected towards ORC, cost of meter and 'CRA' from Devang Sanstha.

The Commission observes with concern that primarily incidences of collection of amounts towards ORC, cost of meter and 'CRA' post the operation of the Order dated September 8, 2006 in Case No. 70 of 2005 and the issuance of the Commercial Circular No. 43 on September 27, 2006, are demonstrative of severe anomalies in the functioning of MSEDCL. The said acts have been overtly mechanical on the part of errant and negligent officials who have not paid adherence to the revisions in the erstwhile schedule of charges which have been mandated under the Order dated September 8, 2006. The Commission further observes that the stand taken by MSEDCL that their field officers should gain clarity on the implementation procedure enunciated under the Order dated September 8, 2006 within two weeks from April 13, 2007, is misconceived. The Commercial Circular No. 43 issued by MSEDCL themselves on September 27, 2006 provides for enough clarity on the import of the said Order. On the issues raised in the complaint as to refund of the depreciated value of amounts spent on DDF, as per Regulation 3.3.3 of the Supply Code having not yet materialised in favour of various consumers, the Commission observes that the position of law is well settled under the Supply Code.

While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and/or the Order dated September 8, 2006. The Commission further observes that consumer representatives /



organisations who/which are invited to attend hearings and/or make submissions, should ensure sufficient co-operation.

There shall be directions to MSEDCL in terms of the above. The Commission reiterates that appropriate action under Section 142 of the EA, 2003 may be considered by the Commission on the Managing Director, Director (Operations) and Chief Engineer (Commercial) of MSEDCL, should the directives issued to MSEDCL under this Order not be complied with.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman



(Smt. Malini Shankar)
Secretary, MERC