

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai - 400 005  
Tel. No. 022 22163964/65/69 – Fax 022 22163976  
E-mail mercindia@mercindia.org.in  
Website: www.mercindia.org.in**

**Case No. 183 of 2011**

**In the matter of**

**Petition filed by the Chamber of Marathwada Industries and Agriculture under Regulations 92, 93 and 95 of the MERC (Conduct of Business) Regulations, 2004 for issuing appropriate directions to Maharashtra State Electricity Distribution Company Ltd. to withdraw their Commercial Circular No. 141 dated 18<sup>th</sup> August, 2011 and to refund the collected additional amount along with interest to the consumers.**

**Shri. V.P. Raja, Chairman  
Shri. Vijay L. Sonavane, Member**

Chamber of Marathwada Industries and Agriculture,  
Bajaj Bhavan, P-2, MIDC Area, Station Road,  
At. Aurangabad.

.....Petitioner.

V/s.

Maharashtra State Electricity Distribution Company Ltd.  
Prakashgarh, Bandra (E), St. Road, Mumbai

. ....Respondent.

Present during the hearing:

**Advocate/ Representative for the Petitioner : 1) Mr. S.C. Karandikar (Adv.)**

**Advocate / Representative for the Respondent : 1) Ms. Deepa Chawan (Adv.)  
2) Mr. S.V. Bapat (Rep. for MSEDCL)**

## ORDER

Dated: 26 August, 2012

The Petitioner, Chamber of Marathwada Industries and Agriculture at Aurangabad had filed a Petition before the Commission on 15<sup>th</sup> December, 2011 under Regulations 92, 93 and 95 of the MERC (Conduct of Business) Regulations, 2004 for issuing appropriate directions to the Respondent Maharashtra State Electricity Distribution Company Ltd('MSEDCL') to withdraw their Commercial Circular No. 141 dated 18<sup>th</sup> August, 2011 and to refund the collected additional amount along with interest to the consumers.

2. The prayers of the Petitioner are as under:

*“ The Hon’ble Commission to issue the following directions to MSEDCL immediately*

- 1. To withdraw Commercial Circular No. 141 dated 18th Aug. 2011 of MSEDCL and to refund the collected amount from Sept. 2011 along with interest to the consumers.*
- 2. To withdraw Commercial Circular dated 24.08.2011 of MSEDCL stipulating that the date of realization of the amount to MSEDCL account shall be considered as the date of payment.*
- 3. We further pray the Hon’ble Commission to pass any such other orders as the Hon’ble Commission deems fit and proper in the interest of justice, in the circumstances of the case.”*

3. The Petitioner submitted that the Petitioner is an Association of Industries and Agriculture and all its members are the consumers of the Respondent MSEDCL.

4. It was also submitted that the Hon’ble Commission vide Interim Order dated 31<sup>st</sup> October, 2011 in Case No. 100 of 2011 and Case No. 143 of 2011 computed the calculations based on the actual figures of ARR submitted by the Respondent MSEDCL and permitted the Respondent MSEDCL to collect an average @ 41 paise per Kwh from the consumers. Thereafter the Respondent MSEDCL had issued a commercial Circular No. 150 on 9<sup>th</sup> November, 2011 and added this approved additional charges in the tariff from the month 1<sup>st</sup> November, 2011.

5. Thereafter the Respondent MSEDCL had once again issued a Commercial Circular No. 141 dated 18<sup>th</sup> August, 2011 and again continued to collect the amount at an average @ 22 paise per kwh from the consumers from the month of September 2011.

When they have already recovered total revenue gap of Rs. 1136.27 Crore pertaining to FY 2009-10 and also recovering approved additional charges as per interim order in Case No. 100 of 2011, it was incorrect and illegal to continue to collect average @ 22 paise from the consumers. It is nothing but collecting double amount for the same propose. It is additional and unordered tariff hike in addition to the hike of Rs 3,265Crore approved by the Commission vide interim order dated 31<sup>st</sup> October, 2011.

6. In reply to the allegation made in the Petition, the representative of the Respondent submitted its reply on affidavit dated 5th January, 2012, before the Commission that the Commission vide order dated 2nd December, 2010 in Case No. 69 of 2010 has *interalia* permitted the additional revenue of Rs. 1136.27 Crore and further permitted the Respondent to recover the same from the consumers through tariff w.e.f. 1<sup>st</sup> December, 2010. Therefore the Respondent hereby craves leave to refer and rely upon the said order dated 2nd December, 2010.
7. The Respondent further submitted that the Commercial Circular No. 141 dated 18<sup>th</sup> August 2011 has been issued accordingly for information of the field officers and as well as for the consumers, which the Petitioner in the present petition has contested with a request to withdraw the said circular.
8. During the first hearing held on 06th January, 2012 the Petitioner and Respondent were directed by the Commission to reconcile the issues regarding the Additional Energy Charges levied by the Respondent. The Respondent was also directed to get the circular dated 24.08.2011, bearing No. Dir. (F) MSEDCL/ No. 25941, issued by the Respondent, examined by its legal department, as to whether, it contravenes or is contrary to any established principles of law or any precedent set by the Hon'ble Supreme Court of India. The Commission further directed the Respondent to encourage the Consumers to pay the amount of bills through the Settlement System of Real Time Gross Settlement (RTGS) or by National Electronic Fund Transfer (NEFT) etc.
9. During the second hearing held on 08th February, 2012, the Commission found that no progress in the matter was made by parties with regards to the Commission's earlier directions. The Respondent was once again directed to comply with the Commission's earlier directions. During the course of hearing the Petitioner agreed to amend the prayer/relief clause to define the grievance of the petitioner more precisely. Accordingly, the Petitioner submitted the amended prayer/relief vide

amended petition dated 23rd February, 2012, the relevant extract of the said prayer is set out here under-

*“To delete Para 3 of the Circular dated 24 August, 2011 starting from the words “ Considering the volume of revenue .....” and ending with the words “.....prompt payment discount to the consumers”. And to delete Para 8 of the Circular starting from the words “ Supdt. Engineers of the circles.....” and ending with the words “ ..... last date applicable for prompt payment discount.”*

10. Thereafter in the subsequent hearing held on 16th March, 2012, the Commission directed both the parties to submit their written submissions/ arguments which should also include the interpretation of the Circular No. 141 dated 18th August 2011 and reported case-law on the issue of date of payment of bill amount as to whether it is the date issue of cheque by the consumer or the date of realisation of the cheque amount by the distribution company that has to be considered as the date of payment of the bill . The Commission also expressed the need to delve into and examine the underlying papers of the relevant tariff order before arriving at a decision with regard to the refund of excess additional energy charges collected from the Consumers.

11. As per the directions the Respondent submitted its case-laws and written arguments on 30th March, 2012 and 13th April, 2012 respectively, before the Commission. Relevant portion of the Commercial Circular No. 141 dated 18th August, 2011 reads as follows:-

*“ The Commission vide Order dt. 2.12.2010 has approved additional energy charges, which will be recovered through tariff from the consumers with effect from 1st December, 2010 for first 9 months and after completion of 9 months the additional charges will have to be levied as per 12 months charges as approved in the same order as per the MERC order dt. 2nd December, 2010, Commercial Circular No. 131 dt. 13/01/2011 has been issued for implementation of the said order.*

*Now 9 months period is completed and therefore the additional charges as approved in the order dated 2nd Dec 2010 need to be levied as per 12 months charges w.e.f billing months of September 2011. Table indicating the category –wise additional charges to be levied to all consumers categories is provided in Annexure “A”.*

12. After hearing both the parties and considering the material placed on record before the Commission, with regard to the prayer clause one(1) of the petition, the Commission is of the view that the Commercial Circular No. 141 dated 18th August, 2011, issued by the Respondent, MSEDCL is in line with Para Nos. **1.96** and **1.98** of the Commission's Order dated 2nd December, 2010 in Case No. 69 of 2010. The verbatim extract of the said paras are reproduced below:

*“ 1.96 After completion of 9 months, the Additional Energy Charge will be levied as computed on 12 months sales (column 5) from the consumers.*

*1.98 This Order shall come into force from 1st September 2010. However, the additional recovery shall commence from 1st December 2010.”*

Commission's order dated 2.12.2010 in Case No. 69 of 2010 regarding additional energy charges has attained finality. Furthermore the conjoint reading of the aforesaid extracts reveals that being in line with the Commission's order, the Commercial Circular No. 141 dated 18.08.2011 cannot be seen as disregarding the Commission's Order and therefore cannot be treated as invalid. Hence, the Petitioner's prayer/relief clause one (1) is rejected.

13. In regard to prayer/relief clause two (2) of the petition, the Commission has not found any relevant material from the Petitioner's side to show that the date of payment of bill should be considered as the date of receipt of cheque by the distribution licensee. The Petitioner has not provided any relevant material to support its contention that the circular issued by the Respondent MSEDCL, on 24.08.2011 saying that the amount of bill should be credited to MSEDCL's account on or before the last date applicable for availing the prompt payment discount is a willful misinterpretation of the Commission's Order, and is against the standard commercial principles for which the said circular needed to be quashed. However the Respondent in order to sustain/support its circular, that the payment procedure introduced therein is in line with the Central Government Account Rules, had submitted the publication issued by Controller General of Accounts, Department of Expenditure, Ministry of Finance i.e

Part II, RECEIPT OF GOVERNMENT REVENUES, DUES, ETC. AND CREDITING THEM INTO THE GOVERNMENT ACCOUNT . The relevant para reproduced as under-

**20. Date of Receipt of Government revenues, dues etc. -**

*Government dues tendered in the form of a cheque or draft which is accepted under the provision of rule 19 and is honoured on presentation, shall be deemed to have been paid-*

- (i) *Where the cheque or draft is tendered to the bank, on the date on which it was cleared and entered in the receipt scroll.*

*Exhibit-B : Public Provident Fund Scheme, 1968: .....Minor Circular No. DGBA.CDD.H-7530/15.02.2001/2009-10, dated 29.03.2010.*

**1. Reckoning the date of deposit in case of cheque payment-**

*(b) In order to bring uniformity in the reckoning of the date of deposit in the PPF vis-a vis POSS and SCSS, the GoI vide their letter F. No. 7/7/2008/NSII dated February 10, 2010 have decided that hereafter in modification of Ministry of Finance letter No. F. 3 (9)- PD/ 72 dated September 4, 1972 “ when a deposit is made in the PPF account by means of a local cheque or demand draft by the subscribe, the date of realization of the amount will be the date of deposit.”*

In view of the Central Government Account Rules quoted above, and for the above stated reasons, the petitioner prayer's are rejected being devoid of merits and on account of lacking sufficient grounds.

With the above, Case No. 183 of 2011 is dismissed.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V. P. Raja)  
Chairman