

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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**Case No. 95 of 2011**

**In the matter of Petition filed by MSEDCL seeking stay of Order dated June 02, 2011 in Case No. 31 of 2011.**

**Shri. V.P. Raja, Chairman**

**Shri. Vijay L. Sonavane, Member**

Maharashtra State Electricity Distribution Co. Limited (MSEDCL)

5<sup>th</sup> Floor, Prakashgad,

Bandra (East), Mumbai – 400 051

.....Petitioner

**ORDER**

**Dated: August 23, 2011**

The Petitioner MSEDCL has filed a Petition under affidavit on July 20, 2011 under Regulation 91 read with Regulation 93 of the MERC (Conduct of Business) Regulations 2004 with the following prayers:-

- a. *The Hon'ble Commission may be pleased to take on record the Miscellaneous Application and may be further pleased to stay the operation of the Order dated 2<sup>nd</sup> June 2011 passed by the Hon'ble Commission in Case No. 31 of 2011 till such time the appeal filed by the Applicant before Appellate Tribunal contesting order dated 9<sup>th</sup> November 2010 is disposed off.*
- b. *The Hon'ble Commission may also be pleased to permit the Petitioner Company to make additional submissions and may further be pleased to permit the Applicant to make further submissions as may be required and may also permit to alter/amend/modify/supplement the submissions."*

2. The Brief facts of the case as submitted by the Petitioner in his Petition are set out hereunder:
- a) The Commission in Case No.31 of 2011 has passed an Order on June 2, 2011 *inter-alia* directing the Petitioner to refund the amount collected from M/s R.L. Steel Ltd., Aurangabad against the voltage surcharge from April 2010 to October 2010 within 30 days from the date of issue of the order.
  - b) The Commission vide its Order dated March 5, 2010 in Case No. 71 of 2009 has *inter-alia* approved the prayer of the Petitioner to permit the Petitioner to levy the voltage surcharge of 2% of additional units billed for supply to the consumer at Voltages lower than that specified in SoP regulations.
  - c) The Commission vide its Order dated September 12, 2010 in Case No. 111 of 2009 has *inter alia* clarified that levy of 2% Voltage surcharge is not applicable for consumers connected on Express Feeders.
  - d) The Commission thereafter vide its Order dated November 9, 2010 in Case No. 52 of 2010 clarified that the Order dated March 5, 2010 passed by the Commission in Case No. 71 of 2009 does not permit the Petitioner to levy Voltage Surcharge @ 2 % of extra units if the power supply to the consumer is given on dedicated feeder (only one connection on said feeder).
  - e) The Commission has relied on the said Order dated November 9, 2010 passed in Case No. 52 of 2010 and has passed further Order dated June 2, 2011 *inter -alia* directing the Petitioner to refund the amount collected from M/s R.L. Steel Ltd., Aurangabad against the voltage surcharge from April 2010 to October 2010 within 30 days from the date of issue of the said Order dated 2nd June 2011.
  - f) The Petitioner is of the view that the aforesaid Order dated November 9, 2010 in Case No. 52 of 2010 being in contradiction to the settled principles of the law, in view of which it has filed an appeal under Section 111 of the Electricity Act, 2003 before the Appellate Tribunal of Electricity(APTEL), New Delhi contesting the aforesaid Order dated November 9, 2010 and it is expected that the aforesaid appeal will be listed for hearing before the APTEL in the first week of July 2011 immediately after the vacations are over.
  - g) The Petitioner submitted that it has fair chance of grant of appropriate relief in the aforesaid appeal as prayed for.

- h) In such circumstances, the Order dated June 2, 2011 in Case No. 31 of 2011 having been passed by the Commission by exclusively relying on the said Order dated November 9, 2010 may not be necessarily required to be executed.
- i) It was averred by the Petitioner that the balance of convenience is therefore on the Petitioner and the Commission therefore needs to consider the situation in the right perspective and may be pleased to temporarily stay the operation of the said above Order dated June 2, 2011 passed in Case No. 31 of 2011 till such time the Appeal filed by the Petitioner is disposed of by the Appellate Tribunal.
- j) It was averred by the Petitioner that in case the Petitioner refunds the amount collected from M/s R.L. Steel Ltd; Aurangabad against the Voltage Surcharge from April 2010 to October 2010 and subsequently succeeds before the Appellate Tribunal, it would not be easy for the Petitioner to recover the amount of said refund from M/s R.L. Steel Ltd; Aurangabad. The Petitioner respectfully submitted that instead the Commission permits the Petitioner to defer payments/refund to M/s R.L. Steel Ltd; Aurangabad for the time being till the appeal filed by the Petitioner in this regard is disposed of, the issue of payment of refund to M/s R.L. Steel Ltd; Aurangabad will get settled automatically depending upon the outcome of the said appeal.
3. The Commission vide Notice dated July 12, 2011 scheduled a hearing in the matter on July 20, 2011 and directed the Petitioner to serve the copy of the Petition to the authorized Consumer Representatives, and M/s R.L steel and Energy Ltd. Aurangabad
4. In pursuance to the aforesaid notice, a hearing was held on July 20, 2011, wherein the Petitioner, MSEDCL submitted that it is implementing the Order of Commission as per best of its ability after the Tariff Order dated September 12, 2010 and stopped levying Voltage surcharge on consumers which are supplied on lower voltage than specified in the MERC (Standards of Performance of Distribution licensees, Period of giving supply and determination of Compensation) Regulations, 2005. The Petitioner, MSEDCL also submitted that it has already filed an Appeal before Hon'ble APTEL contesting the Commission's Order dated November 09, 2010 in Case No. 52 of 2010.
5. Having heard the Parties concerned and after considering the material placed on record, the Commission is of the view that Hon'ble Appellate Tribunal has expressed the view in Order dated February 20, 2011 in Appeal No. 199 of 2010 and Appeal No. 45 of 2011 – that *“Any statutory authority which is subordinate to another statutory authority within the periphery of the appellate jurisdiction*

*must not go through revision and re-examination of its own orders after the appeal is presented and admitted”.*

6. Furthermore, the Commission constituted under the 2003 Act exercises various powers and performs various functions. In exercise of its powers and functions, the Commission inter alia passes orders and directions. If these orders and directions are not complied with then the exercise of powers and performance of functions by the Commission becomes illusory and inoperative unless the Commission executes its orders or implements its orders. Through various judgments of the Hon’ble Supreme Court, it has been established that a statutory power carries with it all other powers which are incidental or consequential upon exercise of such power and such powers can be impliedly read to make the exercise of the power conferred under the law to be really effective, since otherwise the purpose of conferment of power under the law is defeated. For this purpose, it may be relevant to notice a few judgments, as under:

(a) The Hon’ble Supreme Court in the State of Karnataka vs. Vishwabharathi House Building Co-operative Society and others [(2003) 2 SCC 412], had held that the provisions of the enactments providing for establishment of the special tribunals (Consumer Protection Act in the case before the Hon’able Supreme Court) are required to be interpreted as broadly as possible. On such an interpretation, the Court held that the courts or tribunals must be held to possess power to execute their orders or implement their orders, even if it has not been so provided in the statute under which they are functioning. The relevant observations of the Hon’ble Supreme Court are extracted hereunder:

“59. It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess power to execute their own order.

60. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective.”

(b) In Union of India and another Vs Paras Laminates (P) Ltd (AIR 1991 SC 696), is was inter alia held as follows:-

“8. There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognized as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the

power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11<sup>th</sup> edn.) “Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution”.

- (c) It may also be pertinent to refer to the judgment of the Hon’ble Supreme Court in *Khargram Panchayat & Others v. State of West Bengal & Others* [(1987) 3 SCC 82], wherefrom the following observations are pertinent:-

“It is well accepted that the conferral of statutory powers on these local authorities must be construed as impliedly authorizing everything which could fairly and reasonably be regarded as incidental or consequential to the power itself. See “De Smith’s Judicial Review of Administrative Action, 4<sup>th</sup> edn., p.95, HWR Wade’s Administrative Law, 5<sup>th</sup> edn., p 217, Craies on Statute Law, 6<sup>th</sup> edn. P.276, *Attorney General v. Great Eastern Railway, Baroness Wenlock v. River dee Co.* De Smith in his celebrated work *Judicial Review of Administrative Action*, 4<sup>th</sup> edn., at p. 95 puts the law tersely in these words:

The House of Lords has laid down the principle that “whatever may fairly be regarded as incidental to, or consequential upon those things which the legislature has authorized, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.

This principle was enunciated by Lord Selborne in *Attorney General v. Great Eastern Railway*, in these words:

The doctrine of ultra vires ought to be reasonably and not unreasonably, understood and applied and whatever may be fairly regarded an incidental to, or consequential upon, those things which the legislature has authorized ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.

These words have been quoted by Professor Wade in this monumental work *Administrative Law*, 5<sup>th</sup> edn., at p.217 and also be Craies on Statute Law, 6<sup>th</sup> edn., at p. 276. Craies also refers to the observations of Lord Watson in *Baroness Wenlock v. River Dee Co.*, to the effect:

Whenever a corporation is created by the Act of Parliament, with reference to the purposes of the Act and solely with a view to carrying these purposes into execution, I am of opinion not only that the objects

which, the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions.”

(d) Hon’ble Judgment of the Gauhati High Court in Arabinda Das Vs State of Assam [AIR 1981 Gau 19 (FB)] is also relevant in the context of the matter under consideration, wherein the Hon’ble High Court held as under:

“We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority. In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power.”

(e) In *U.P. Power Corporation Ltd. v/s NTPC and ors.* [Reported in 2009 (2) UJ SC 0966], the Hon’ble Supreme Court held that:-

“a regulatory commission not only makes regulations but in view of its extensive powers but also in-charge of implementation thereof” [Para 5]

(f) The Hon’ble Appellate Tribunal for Electricity in its judgment dated May 18, 2007 in *Tamil Nadu Newsprint and Papers Ltd. v/s TNERC*, held that the State Commission is not powerless in securing implementation of its directives. The relevant extract is below:-

“16. Since the Commission has given a direction to the TNEB to frame and file model PPA for approval of the TNERC, we have no manner of doubt that the TNEB will present model PPA before the TNERC and in case it does not do so within reasonable period of time, the **TNERC is not powerless in securing implementation of its directives.**”  
{Underling and bold added}

7. Accordingly, once, having directed the present petitioner MSEDCL to refund amount collected from M/s R. L. Steels and Energy Ltd against the voltage surcharge from April 2010 to October 2010 within 30 days from the Order dated June 02, 2011 in Case No. 31 of 2011 and to report compliance there of to the

Commission within seven days after making the refund as directed, the Commission cannot stay the said order during the pendency of the appeal filed by MSEDCL.

In view of the above, the present petition stands dismissed.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V. P. Raja)  
Chairman