

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 108 of 2011

In the matter of
Implementation of the Judgment dated 11th July, 2011 rendered by the Hon'ble
APTEL in Appeal Nos. 156 of 2010 and 155 of 2010

Shri V.P. Raja, Chairman

ORDER (SUO MOTU)

Date: 3rd October 2011

Background –

A Petition in the matter of Case No 75 of 2007 was filed before the Commission by M/s. Mahratta Chamber of Commerce, Industries and Agriculture (MCCIA) regarding Single Point Supply to Commercial Building/Industrial complexes for feeding mixed load. In the said Petition, MCCIA sought clarifications regarding issues involved in the implementation of the Commissions directives of entering into franchisee agreement or availing individual connections by consumers availing single point supply.

2. After hearing the matter, the Commission vide Order dated 1st June 2010, ruled in the matter of Case No 75 of 2007 as follows:

“29. Having heard all concerned and after considering the materials placed on record, the Commission noted that various complexes and multi storey buildings are coming up with number of consumers and common facilities within a complex or a building. In such cases, it may be difficult and/or impracticable for Distribution Licensee to give supply to every consumer individually, especially if they are required to be connected at HT level. The Commission has addressed this issue in its order dated May 24, 2010 in the matter of MSEDCL’s Petition for In-principle approval of MoU route for selection of Distribution Franchisee (Case No.62 of 2009) and is of the view that the same dispensation as set out in Para 7 of

the Commission order dated May 24, 2010 in the Case No. 62 of 2009 may also be applied in toto in all such cases.

30. With this dispensation, the Commission directs that within one year from the date of this order, all distribution licensees in the State should enter into Franchise agreement with willing single point consumers either through MoU or Competitive bidding basis.

31. The Commission is also of the view that the above directive does not dilute the rights of individual owners or occupiers of the premises in terms of the Electricity Act, 2003 to avail electricity supply from distribution licensee. The individual owners or occupiers located in a commercial building/premises may apply to the distribution licensee for electricity supply as per the provisions of the Electricity Act, 2003 and the Regulations made there under. This means that even if the franchisee model is adopted for single point supply to a premise, then also an independent connection may be given to an owner or occupier of a unit in the said premises.

32. As regards the clarifications sought by the Petitioner in its Petition, the views of the Commission are as under:

A-i) Whether a common transformer for all or a separate transformer for each HT consumer within same premises need to be provided?

The Commission is of the view that providing power supply to individual HT consumers located in a single building through separate transformer is not practicable due to space constraint and hence, directs distribution licensees to, provide power supply to such entities at single point through franchise route.

However, in case HT consumers located in a building apply for individual power supply then the space requirement of transformer for providing such power supply shall be governed by the Regulation 5.5 and 5.6 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulation 2005 which reads as under:

“ 5.5 Where, in the opinion of the Distribution Licensee, the provision of supply requires installation of a distribution transformer within the applicant’s premises, the applicant shall make available to the Distribution Licensee, by way of lease, for the period for which supply is given to the premises, a suitable piece of land or a suitable room within such premises for the distribution transformer:

Provided that the terms and conditions for such lease of land or room shall be mutually agreed between the Distribution Licensee and the applicant having regard to prevailing market rates:

.....

5.6 Notwithstanding anything contained in Regulation 5.5, where the provision of land or room is required under the Development Control Rules of the local authority or by any appropriate authority of the State Government, the terms and conditions for use of such land or room by the Distribution Licensee shall be as determined under the said Rules or by the said authority.”

A-ii) Whether each transmission OA consumer need a separate line running up to Transmission System or a common line for a group of Transmission OA consumers in the same premises can be planned?

Regulation 4.2 of MERC (Transmission Open Access) Regulations 2005, and Regulation 3 & 15 of MERC (Distribution Open Access) Regulations 2005 specifies the modality for seeking open access to the transmission and distribution systems of the licensees.

As per the views and suggestions received from the Working Group, subject to fulfillment of the eligibility to seek open access under the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005, it is technically feasible to give one OA line for many consumers in the same plot/area and hence, no duplication of network is needed as long as sharing of wire network is considered for the OA purpose. As it is obligatory for distribution licensee to give non-discriminatory access to OA consumers, OA consumers has to pay only the charges as decided by the Commission for utilising distribution system for the OA purpose.

A-iii) Can NON – OA consumers / persons get their supply through / on OA transmission connection planned by the owner of the premises for his requirement in following cases:-

- a) Distribution Licensee has not laid distribution back-bone,***
- b) Unable to supply required power,***
- c) Unable to supply required power in allowed time under the Act?***

The Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005 specifies the eligibility to seek open access and accordingly so far as eligibility criterion is satisfied a consumer of a Distribution Licensee shall be eligible for open access to the distribution system of such Distribution Licensee for obtaining supply of electricity from a Generating Company or from a Licensee other

than such Distribution Licensee. Accordingly, at the present Contract Demand of a consumer must be not less than 1 MVA to seek open access. Thus, in principle, the clarification raised by the Petitioner is answered in the negative because to allow NON – OA consumers / persons to get their supply through / on OA transmission connection planned by the owner of the premises would be to violate the Distribution Open Access Regulations mentioned above.

A-iv) In case Standby DG sets for ensuring un-interrupted power is planned by the owner of the above premises for all the tenants / leave – licensees whether the complex in its capacity as generator can have single point supply?

Yes, provided they are covered by a franchisee agreement common to all the beneficiaries.

B. To allow open access to all consumers in Commercial Building / Industrial Complexes with mixed load on single point supply if required, in case Licensee does not permit Franchisee route. Alternately and otherwise owner / manager of the premises i.e. commercial building / industrial complex having mixed load be treated as limited trader for supply to members on his premises.

In view of the dispensations given in this order and the Commission order dated May 24, 2010 in the matter of MSEDCL's Petition for In-principle approval of MoU route for selection of Distribution Franchisee (Case No.62 of 2009) the licensee cannot refuse to appoint / enter into franchisee agreement.” (emphasis added)

Directions of the Hon'ble Tribunal

3. In Appeal No. 155 of 2010 and 156 of 2010 from the aforesaid Order dated 1st June 2010 in the matter of Case No 75 of 2007 filed by M/s K. Raheja Corporation Pvt. Ltd and MCCIA respectively, the Hon'ble Appellate Tribunal for Electricity upheld the said Order of the Commission as follows:-

“ 26. In the ultimate analysis, we are to observe that the clarifications sought for on the queries by the appellants were given by the Commission and it is in this Tribunal that the queries were multiplied requiring answer from us but these queries are not subject-matter of any dispute and we do not find any fault with the order of the Commission.

27. As we seriously mean that single point supply in the context in which the parties have understood the matter should be done away with for all times to come with making proper arrangements in the alternative as

suggested in the Commission's impugned order we direct the Commission to enforce its order within a period of six months from the date of this order.”(emphasis added)

4. In view of the above directions of the Hon. Tribunal, the Commission, vide Notice dated 4th August 2011, fixed a *Suo-Motu* hearing on 5th September 2011. Copy of the Notice for *Suo-Motu* hearing along with the above said Judgment of Hon. Tribunal was sent to all the distribution licensees in the State viz., MSEDCL, TPC-D, BEST and RInfra-D, as well as served on authorized Consumer Representatives and the Appellants in the matter of Appeal No. 155 of 2010 and 156 of 2010.

5. MSEDCL vide its letter dated 2nd September 2011, submitted that, MSEDCL has already entered into Distribution Franchisee Agreement (DFA) through MoU route with nine developers in its area of supply. It further submitted that, Distribution Franchisee Agreement was entered into for an initial period of one (1) year only, which will be extended further on approval of the draft Distribution Franchisee Agreement submitted vide its letter dated 20th April 2011 to the Commission for approval.

Suo motu hearing by the Commission

6. The hearing in the matter was held on 5th September 2011. Representatives of all Distribution licensees in the State i.e. MSEDCL, BEST, RInfra-D and TPC-D were present during the hearing. Representatives of the Appellant in the matter of Appeal No. 155 of 2010 and 156 of 2010 were also present.

7. During the hearing, all parties were apprised of the background of the *Suo-Motu* hearing. The Commission directed that all such premises availing single point supply and sub-distributing electricity for feeding mixed Industrial / Commercial load shall be brought in line of the provisions of the Electricity Act 2003 as held by the Commission in its various Orders dated 3rd October 2006; 20th June 2008; 1st June 2010, as follows:-

8. The Commission in its tariff order dated 3rd October 2006 held as follows:-

*“Any HT Industrial and commercial category consumer undertaking sub-distribution to mixed loads **shall continue to be under this category for a period of six months from the date of this order** keeping in view the metering constraints and identification of consumers. Thereafter, the consumers belonging to this category requiring a single point supply will have to ***either operate through a franchisee route or take individual connections under relevant category***”*

9. The Commission in its Order dated 20th June 2008 in Case no. 72 of 2007 held as follows:

“2.10. As regards creation of a separate tariff category for supply intended for townships under a franchisee agreement or otherwise, to enable the township developer, the township developer or franchisee to supply to mixed loads within the township, the Commission has already clarified that taking bulk supply at single point and supplying further to individual dwellings is legal only in a case of Group Housing Societies and in case there are other loads, such as commercial, industrial, etc., the same cannot be supplied through the same connection. Separate individual connection will have to be taken for such loads, as it is possible to supply to such consumers after taking supply at single point, only in case the supplier has a distribution license or has been appointed as a franchisee by the distribution licensee.....”

*6.3MSEDCL has been directed to ensure metering arrangements so that the consumers currently classified under **HT VI commercial category and requiring a single point supply, will have to either operate through a franchisee route or take individual connections under relevant category. MSEDCL is directed to ensure compliance with this directive immediately.**”*

Orders

10. Having heard the Distribution Licensees and the Appellants in Appeal No. 155 of 2010 and 156 of 2010, and after considering all the documents available on record, the Commission is of the view as follows:

(i) The Hon’ble Tribunal has in its judgment in Appeal No. 155 of 2010 and Appeal No. 156 of 2010 dated 11th July, 2011 directed as follows –

*“27. As we seriously mean that single point supply in the context in which the parties have understood the matter should be done away with for all time to come by making proper arrangements in the alternative as suggested in the Commission’s impugned order **we direct the Commission to enforce its order within a period of six months from the date of this order.**” {Emphasis added}*

(ii) The Commission is of the view that the Commission could see to the enforcement and implementation of its Order dated 1st June 2010, by a phase wise implementation program as under:

(A) The Distribution Licensees shall immediately, take steps to issue notices in newspapers in regard to the direction of the Hon’ble Tribunal to implement the Commission’s order with respect to single point supply. The Distribution Licensees shall provide as much information *suo motu* to the public through various means of

communications, including internet, so that information is disseminated widely and in such form and manner (through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means which is easily accessible to the public.

(B) Simultaneously, the Distribution Licensees shall upload Model Franchisee Agreement on their Website, arranging special campaign, correspondence with such consumers etc

(C) The Distribution Licensees shall within two months of this Order, file a report before the Commission on the status of single point supply in their respective areas;

(iii) On MSEDCL's submission that approval of the draft Distribution Franchisee Agreement submitted vide its letter dated 20th April 2011 to the Commission is awaited, it is hereby clarified that the Commission in its Order dated 24th May 2010 in Case No 62 of 2010 had inter held that *"it is for the Distribution Licensee to adopt any method for selecting the Distribution Franchisee on such terms and conditions as it deems fit."*

In view of above, the Commission directs that implementation of its Order dated 1st June 2010 and direction of the Hon'ble Tribunal in its judgment dated 11th July, 2011 shall not be delayed on the ground that Franchisee Agreement is required to be approved by the Commission. The Distribution Licensees should follow the guiding principles, herein below extracted, of the Commission in the Order dated 24th May 2010 while formulating Franchisee Agreements:

"7.

iv) every Distribution Licensee should evolve a Distribution Franchisee Agreement, which should be common to all its Franchisees selected through MoU route, and hence, non-discriminatory. Also, a Distribution Franchisee cannot refuse if either the Developer or one of the Group of consumers comes forward to become a Franchisee.

The Commission further directs that the dispensation to become a Franchisee of the Distribution Licensee in the State will be available to all the following categories:

- a) Residential colonies*
- b) Commercial buildings*
- c) Multiplexes and malls*
- d) Townships*
- e) Other single point consumers like Railways, Defence, etc.*

The period of Franchisee Agreement should neither be less than five (5) years nor longer than the validity of the licence period of the Distribution Licensee. The Distribution Licensee should prescribe and obtain quarterly returns from the Distribution Licensee in the following format:

Consumer Category	Number of Consumers	Sales in MU per month	Amount billed in Rs. lakh	Amount collected in Rs. lakh

The Licensees may also prescribe and collect information such as interruptions, billing disputes, etc., to monitor and ensure the discharge of its duties regarding Standards of Performance, Consumer Satisfaction, etc.

- v) *Over the past two to three years, the Commission has come across similar problems primarily in the case of existing Commercial and Office Complexes regarding supply at single point for distribution to mixed loads. In such cases, the distribution licensees have neither installed the individual meters nor the sub-distribution of electricity is being regulated in any manner. Though the Commission has directed the licensees to formulate a practical solution for this problem, there has not been any significant progress. Hence, the Commission is of the view that the practical solution being considered in the present case should be adopted for all such cases of supply at single point for further distribution to mixed loads, **wherein one agency can be appointed as the Distribution Franchisee through the MoU route, and can supply to the individual users within the complex.** This will ensure that all such cases will come squarely within the provisions of the EA 2003, which is not the case now.*
- vi) *However, in respect of Distribution Franchisees to be selected through the competitive bidding process, the licensees are free to prepare separate terms and conditions for each Franchisee Agreement, on a case by case basis. It may be noted that in either case, the retail consumers cannot be charged a tariff higher or lower than that approved by the Commission for the same category of consumers in that licence area, and also, the responsibility of ensuring conformance with Standards of Performance, safety and all other relevant Regulations rests with the respective Licensees.*
- vii) *As regards availability of Open Access to the Distribution Franchisee to source power, the Commission holds that the right of eligible consumers to Open Access cannot be fettered in any manner irrespective of whether the Open Access is being sought for base power requirement or for sourcing the additional power to mitigate load shedding.”*

All the Distribution Licensees in the State are directed to follow above guiding principles while preparing Franchisee Agreement.

As the Commission would need to assess the enforcement and implementation of its Order dated 1st June 2010 and direction of the Hon'ble Tribunal in its judgment dated 11th July, 2011, progress shall be revisited once the activities under clauses (A), (B), (C) of paragraph 10(ii) are complete. The matter will be listed thereafter.

Sd/-
(V. P. Raja)
Chairman