

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 172 of 2011

In the matter of
Petition of MSEDCL for recovery of expenditure to be incurred for shifting of poles & conversion of low tension / high tension overhead distribution network to underground from consumers situated within the geographical limits of Nagpur Municipal Corporation.

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

The Managing Director
Maharashtra State Electricity Distribution Co Ltd.,
Prakashgad,
Bandra (East), Mumbai 400 051

..... Petitioner

Vs.

The Municipal Commissioner,
Nagpur Municipal Corporation,
Mahanagarpalika Marg,
Behind Reserve Bank of India,
Civil Lines, Nagpur 440 002

- Respondent

Present during the hearings:

For the Petitioner: Shri. N. B. Wadekar, Chief Engineer, MSEDCL (Rep.)

For the Respondent: Shri. S. B. Jaiswal, Executive Engineer, NMC (Rep.)

ORDER

Dated: February 15, 2012

The Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) filed a Petition before the Commission on 17 November, 2011 for recovery of expenditure to be incurred for shifting of poles and conversion of low tension / high tension overhead distribution network to underground from consumers situated within the geographical limits of Nagpur Municipal Corporation.

2. MSEDCL in its Petition has prayed as follows:

“

- a) *Permit the Applicant Company to recover 50% of the actual capital expenditure that would be incurred for executing the work from the consumers situated within geographical jurisdiction of Nagpur Municipal Corporation ,i.e. the consumers from the O&M Divisions of MSEDCL at Mahal, Gandhibaug, Congress Nagar & Civil Lines under Nagpur Urban Circle at the rate of Rs.130 per month per consumer (tentatively)over a period of six months by way of “Infrastructure Charge”;*
- b) *Permit the Applicant Company to follow similar policy in other areas also wherever the Local Body and /or the consumers request the Applicant Company for shifting of electric poles and conversion of Low Tension /High Tension Overhead Distribution Network into Underground.*
- c) *Advise the State Government in Urban Development Department to desist from issuing such directions to the Licensees in the State which requires the Licensees to incur certain expenditure for the benefit of particular projects taken up by said departments ;*
- d) *Permit the Applicant Company to modify /amend /alter /revise the Application and to submit additional information /details ,as may be required during the proceedings*
- e) *Condone any lapse and /or error in the Application.”*

3. MSEDCL in its Petition has submitted as follows:

- a. The Government of Maharashtra vide Govt. Resolution (GR) dated 23rd February 2001 sanctioned the Integrated Road Development Plan (IRDP) for the city of Nagpur. In the said GR it was stipulated that expenditure to be incurred on shifting poles and electric wires that would come in the middle of widened roads should be shared equally by the erstwhile Maharashtra State Electricity Board, now Maharashtra State Electricity Distribution Co Ltd., (MSEDCL) and Maharashtra State Road Development Corporation (MSRDC).
- b. Sharing of 50% of the cost involved in shifting electric poles / wires is an exceptional burden cast upon MSEDCL, which generally does not happen in other cases.
- c. The Hon'ble High Court of Mumbai (Nagpur Bench) vide its Judgment dated 21 November, 2005 in Writ Petition No. 2829 of 2004 (where one of the issues was the delay in shifting the electric poles and lines standing in the middle of the widened roads or footpaths) directed the Nagpur Municipal Corporation ('NMC') to remove and shift such electric poles & wires which are on carriage way and on the footpaths

to a safer place, in consultation with the erstwhile MSEB. In the same Order, the Hon'ble High Court further directed that the State of Maharashtra, the erstwhile MSEB and the state Public Works Department to provide the necessary funds to enable the Nagpur Municipal Corporation to complete the work.

- d. The said Order was contested by the erstwhile MSEB before the Hon'ble Supreme Court by way of Special Leave to Appeal (Civil) No. 3995 of 2006. During the pendency of the said SLP, a meeting was convened by the Principal Secretary (Planning), Govt. of Maharashtra. During the said meeting, MSEDCL as a special case indicated its willingness to share 50% of the cost involved in shifting electric poles and lines. Taking note of MSEDCL's acceptance given, the Hon'ble Supreme Court vide Order dated 13 February, 2009 disposed of the said SLP.
- e. Nagpur Municipal Corporation has so far completed a portion of the total work of shifting of poles & wires of Rs 12.74 crore and as committed before the Hon'ble Supreme Court, MSEDCL has contributed 50% of the expenses, i.e., Rs 6.37 crore.
- f. Subsequently, the Hon'ble High Court, Mumbai (Nagpur Bench) vide Order dated 17 August, 2011 in Writ Petition No. 51 of 2010 directed Nagpur Municipal Corporation and MSEDCL to complete the balance work of shifting electric poles and wires within eight months from the date of Order.
- g. The total cost of balance work has been estimated as Rs 91.45 crore out of which 50%, i.e., Rs 45.73 crore will have to be borne by MSEDCL. As the cost of capital expenditure to be shared by MSEDCL is more than Rs 10 crore, a detailed project report has been submitted to the Commission for in-principle approval.
- h. MSEDCL is required to incur the expenditure from its own resources, and hence there would obviously be no cost benefit and finally the Commission may not permit capitalization on this account. However, in view of directives of the Hon'ble High Court, Mumbai (Nagpur Bench), MSEDCL is obliged to execute the said work.
- i. The benefit of shifting electric poles and conversion of existing overhead distribution network into underground shall be restricted to selected consumers situated in the jurisdiction of Nagpur Municipal Corporation. Therefore, it is suggested that instead of MSEDCL incurring a capital expenditure, if the said capital expenditure can be recovered from consumers situated in the Nagpur Municipal Corporation area, then neither MSEDCL would be put under financial strain nor would the other consumers of the utility have to share in the said expenditure.
- j. Therefore, MSEDCL is proposing to recover the estimated expenditure of Rs 45.73 crore in a six-month period at the rate of Rs 130 per month per consumer from the consumers situated in the Nagpur Municipal Corporation area.

- k. MSEDCL further submitted that it is facing the present situation principally because of the above mentioned GR which was issued without the consent of the erstwhile MSEB. Therefore, MSEDCL has requested the Commission to invoke powers conferred upon it under Section 86 (2) of the Electricity Act, 2003 and advise the Urban Development Department of the State Government to desist from issuing such resolutions, passing the burden of projects executed by other departments on the consumers of MSEDCL.
 - l. It is submitted that if the present proposal of the MSEDCL to levy and recover infrastructure charge from the consumers situated within the geographical limits of Nagpur Municipal Corporation is approved, then a similar principle or policy can be implemented in other areas too.
4. The Commission, vide Notice dated 9 December, 2011 fixed a hearing in the matter on 5 January, 2012 and directed the Petitioner to serve a copy of the Petition on the Respondent and Authorized Consumer Representatives.
 5. During the hearing the Petitioner reiterated the submissions made in the Petition. After hearing the Petitioner, the Commission opined that such issues cannot be treated in isolation as specific to Nagpur as it may arise in other urban areas also. These issues are related to urban planning where the concerned municipal corporation and Urban Development Department, Govt. of Maharashtra are the decision making authorities. Therefore, the Commission directed the Petitioner to implead the Principal Secretary, Energy and the Principal Secretary, Urban Development Department-II and GoM as a party in the matter and to serve the copy of the petition to the Chief Secretary, GoM for information. Further, the Secretary, MERC was directed to take a meeting with above mentioned Principal Secretaries in the presence of MSEDCL to discuss the aforesaid issue. With these directives, the Commission scheduled next hearing in the matter on 27 January, 2012.
 6. MSEDCL vide its letter dated 21 January, 2012 submitted that the present Petition is similar to ARR proceedings and the State Government generally never participates in such proceedings. Therefore, no purpose would be served by impleading the two authorities of State Government as parties in the present proceedings. MSEDCL requested that the Commission may issue a specific Order in this matter using its statutory powers under the Electricity Act 2003. The relevant part of the above said letter of MSEDCL is reproduced below:

“.....MSEDCL believes that, Electricity Regulatory Commission, being a statutory authority constituted under Electricity Act, 2003 is an adjudicatory judicial authority and not a committee where issues like one taken up by MSEDCL in its petition can be discussed, negotiated and reconciled. MSEDCL therefore further firmly believes that, no purpose would be served by impleading the above two authorities of State Government as party to the petition filed by MSEDCL. MSEDCL further states that said proposal of MSEDCL is like ARR proceedings & State Government generally never participates in such proceedings.....”

Accordingly, MSEDCL has therefore deferred from impleading either of the above mention authorities as a party to the Petition and the Commission if so desired may summon Principal Secretary, Energy and the Principal Secretary, Urban Development Department-II, GOM for further hearing of the petition (Case No 172 of 2011), which is fixed on 27th Jan. 2011. In such circumstances, it is needless to mention that, the meeting convened on 23rd Jan. 2011 would be a futile exercise and therefore the said meeting may not be attended by the representatives of MSEDCL. We strongly feel that attending such a meeting would tantamount to reducing the status of a statutory authority to a negotiating forum.....”

On scheduled date of meeting i.e. 23rd January 2012, no representative of the GoM Departments or MSEDCL was present. Hence, the said meeting was not conducted.

7. Final hearing in the matter was held on 27 January, 2012. During the hearing, the Respondent submitted that the said work is basically for removal of obstructions to vehicular traffic and pedestrians to avoid accidents and loss of life and property of the public in general. This work is not meant for conversion of the overhead system to an underground system or system strengthening. The said work is also not for consumers residing in particular areas of the city, it is for the general public irrespective of whether residing in Nagpur or not, those who are moving on roads by vehicles or pedestrians. It is further submitted that if MSEDCL is permitted to follow similar policy in other areas also, then MSEDCL may be asked to bear the cost of shifting poles and other equipment obstructing traffic from roads other than IRDP roads in Nagpur City.

8. Having heard the parties and after considering all the documents available on record, the Commission is of the view that the principal issues that arise for consideration in the present case are:- (i) on whom should the onus of incurring expenditure in such schemes be cast?; (ii) whether to issue advice to the Urban Development Department of Govt. of Maharashtra and (ii) what would be the method of recovery of such expenses from consumers?

9. As regards incurring expenditure on shifting poles and wires under IRDP scheme in Nagpur is concerned, the Hon'ble Higher Courts have given judgments as have been mentioned by MSEDCL, and hence, the parties must implement the Orders of the Higher Courts scrupulously regarding the sharing of expenditure on 50:50 basis. The Commission vide letter dated 14 February, 2012 has already accorded its in-principle approval for Capex scheme submitted by MSEDCL for shifting poles and wires under the IRDP scheme in Nagpur City.

10. Regarding MSEDCL's prayer to advice the Urban Development Department of Govt. of Maharashtra to desist from issuing any direction to the licensee to bear the expenditure in future on shifting poles under a municipal corporation's jurisdiction is concerned, the Commission is of the view that this issue is not limited to shifting poles but may also include converting overhead lines to underground lines and such a request may come from any part of the state. These issues are related to urban planning in the State of Maharashtra where the municipal corporation concerned and the Urban Development Department, Govt. of Maharashtra are the decision making authorities and such issues can only be addressed by an appropriate policy decision of the Govt. of Maharashtra. The role of the Commission in such matters is limited to that of a facilitator. Hence, in order to facilitate this issue before the Govt. of Maharashtra, the Commission has directed MSEDCL to implead the Energy Department and Urban Planning Department in this matter. But MSEDCL has differed with these directions. MSEDCL may initiate appropriate correspondence with the Govt. of Maharashtra requesting an appropriate policy decision on such matters.

11. On the issue of levying charges on consumers situated in Nagpur Municipal area for recovering expenditure incurred on shifting poles and wires under the IRDP scheme implemented in Nagpur, MSEDCL itself has agreed that this issue is in the nature of ARR proceedings. As any Petition in the nature of ARR and fixation of charges to be recovered from the consumers need to be processed as per the procedure stipulated under Section 64 of the Electricity Act, 2003 which mandates public consultation, the prayers of fixing additional charges to be recovered cannot be dealt with in a Petition of the present nature. Further, the Commission is aware of the fact that a Petition under Section 64 of the Electricity Act, 2003 for determination ARR and Tariff for FY 11-12 and FY 12-13 is due for submission from MSEDCL which they have assured to submit in the immediate future. Therefore, without going into the merits of MSEDCL's proposal to levy additional charges on Nagpur Consumers for recovering expenditure incurred for shifting poles and wires under the IRDP scheme, the Commission directs MSEDCL to include this proposal in its upcoming ARR Petition so that public consultation can take place on this issue. Further,

MSEDCL may project similar issues that may arise in other parts of Maharashtra and may propose treatment of recovery of such expenditure in its ARR Petition for public consultation.

With the above observations and directions, Case No. 172 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman