

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 110 of 2011

In the matter of
Petition seeking legal action under Section 129(1), 142 and 146 of the Electricity Act 2003 (EA 2003) for arbitrary levy of two part tariff and wrongful categorization of low tension consumer in the Commission Orders.

Shri V. P. Raja, Chairman

Shri N.PonurathnamPetitioner
Proprietor
M/s Vel Induction Hardenings
25, Majithia Industrial Estate,
Waman Tukaram Patil Marg,
Deonar,
Mumbai-400088

V/s

The DirectorRespondent No. 1
Reliance Infrastructure Ltd.,
Reliance Energy Centre,
Santacruz (East),
Mumbai 400 055.

The Managing Director,Respondent No. 2
Tata Power Company Ltd.,
Bombay House, 24, Homi Mody Street,
Fort, Mumbai 400 001.

ORDER

Dated: October 20, 2011

Shri N. Ponrathnam, Proprietor of M/s Vel Induction Hardenings, filed a Petition on 28/07/2011, seeking legal action under Section 129(1), 142 and 146 of the Electricity Act 2003 ("EA 2003"). It is alleged that the Respondent No.1 has arbitrarily levied two part tariff and that certain of the Commission's orders have not properly decided the issue of

categorization of low tension consumers thereby not complying with section 62(3) of the EA 2003.

2. The prayers made by the Petitioner are as under:

- “
- A) *The Hon'ble Commission should rectify the defects (alter the tariff orders and comply with the Regulations and the provisions of Electricity Act 2003).*
- a. *No discrimination on the basis of load*
- b. *No discrimination on the basis of purpose of electricity as we had only two categories one as residential and other as non-residential in TPC Tariff chart in 2004.*
- c. *The tariff for HT should not be force on LT consumers.*
- d. *Categorization should be uniform to all electricity suppliers in the city.*
- B) *Consumers should not be discriminated by the Electricity Supplying Company.*
- C) *Consumers should not get evasive answer to the query raised especially when it concerns the basis on which a bill is levied.*
- D) *The distribution companies should have separate written agreement for levy of demand charges (acceptance of Application acts as an agreement for applied load denoted as sanction load).*
- E) *The single part tariff should be levied to low tension consumers up to 150 kW/ 187 kVA (201 HP) complying with the regulation.*
- F) *The single part tariff should be levied to low tension consumers even when higher load than specified in regulation is given.*
- G) *The bill prepared by Electric Supplying Company should comply with Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. show in there bill (compulsorily without any option) which is missing in most of the bills raised by the Electric Supplying Company*
- i. *Contract demand/Sanctioned Load;*
- ii. *Maximum demands during the billing period;*
- iii. *Average power factor during the billing period.*
- H) *Allow further submission as and when required*
- I) *The difference in amount (approximately (about Rs. 13,75,000.00 Rupees Thirteen Lacs Seventy Five thousand) for levying two part tariff instead of single part tariff by Reliance energy should be refunded to the Petitioner along with interest.*

J) Delay payment charge and interest should not be claimed from consumers who pay the amount u/s 56 (1) (b) on dispute.

K) Cost of complaint has to be provided

L) Any such further order this Honorable Commission may deem fit.”

3. It has been submitted by the Petitioner that on 21/07/2011 the Petitioner has changed over from Respondent No.1 to Tata Power Company Ltd ('TPC'). However, according to him, this changeover does not restrict his right to claim the pending amounts, if any, from the Respondent No.1. Furthermore, it is submitted that there is a continuous cause of action even when a consumer shifts from the present service provider to any other service provider.

4. The brief facts of the matter as submitted by the Petitioner in the Petition are set out hereunder:

- a) Prior to the first tariff Order dated 01/07/2004 of the Commission in Case No 18 of 2004 a single part tariff was levied considering connected load of 50 HP. The Respondent No.1 was levying two part tariff above 50 HP.
- b) The Commission vide Order dated 01/07/2004 in Case No 18 of 2004 issued directions for levying of two part tariff in respect of Industrial Consumers having connected Load above 15 HP.
- c) In response to the agitation of the aggrieved consumers, a Review Petition dated 04/08/2004 in Case no 12 of 2004 was filed by erstwhile BSES Ltd Respondent No.1 for redefining LTP-1 and LTP-2 categories. As a consequence of which an interim Order dated 30/09/2004 was passed directing the Respondent No.1 to levy single part tariff to all LT industrial consumers upto 50HP instead of 15 HP from October 2004 onwards. Thereafter the Commission passed a final order dated 23/12/2004 in Case no 12 of 2004 wherein the Respondent No.1 was directed to refund the excess amount collected from consumers by levying two part tariff upto 50HP with retrospective effect from July 2004 bill.
- d) In compliance with the Commission's Order dated 23/12/2004 the Respondent No.1 had to reverse the bill of Industrial consumers with a connected load of 50HP and had refunded the excess amount Rs 83,222.72/- collected in the bills from July 2004 to September 2004 to the Petitioner considering him in the category of LTP-1 connected load equal to 50HP single part tariff.

- e) However from October 2004 onwards the Respondent No.1 continued to arbitrarily levy two part tariff of LTP-2 for connected load of more than 50HP when other similarly placed consumer's with a similar connected load were considered as LTP-1, which according to the Petitioner is a violation of MERC Order in Case No 12 of 2004 and by doing so a discriminatory treatment was meted out to him by the Respondent No.1.
- f) The Petitioner is aggrieved by the two part tariff levied by the Respondent No.1 during the period beginning from 2004 and this grievance continues till date. The aforesaid grievance was as a result of the non compliance by the Respondent No.1 with the Orders of the Commission in Case No 12 of 2004, the provision of Section 45(5) of the EA 2003 and the Regulations made thereunder.
- g) The amount collected by the Respondent No.1 includes delayed payment charges and interest which according to the Petitioner is unduly collected from him despite the fact that he has already been making payment under protest as per the provisions of section 56(1)(b) of the Electricity Act, 2003. This levy of delayed payment charges and interest is not in accordance with Regulation 15.5.4 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.
- h) The Commission vide Order in Case No. 12 of 2004 categorized consumers as LTP-1 category (below 50HP) and LTP-2 category (above 50HP) in terms of load which according to the Petitioner is a non-compliance with the provisions under Section 62(3) of the Electricity Act, 2003, so the consumers connected on same voltage cannot be differentiated based on load.
- i) According to the Petitioner the following Orders passed by the Commission have to be rectified as they are *ultravires* the regulations framed by the Commission overlooking the objection raised:
- The Order passed in Case No.18 of 2003 dated 01/07/2004
 - The Order passed in Case No.12 of 2004 dated 24/02/2005
 - The Order passed in Case No.25 of 2005 and 53 of 2005 dated 03/10/2006 wherein the definition of LTP-1 was changed from 50HP to 15HP.
 - The Order passed in Case No.24 of 2006 dated 14/04/2007 wherein the definition of LTP-1 was changed to LTP-3 also in subsequent tariff Orders.
 - The Order passed in Case No.66 of 2007 dated 04/06/2008
 - The Order passed in Case No.121 of 2008 dated 15/06/2009 had clarified that demand charges can be levied only if agreed for a demand by an agreement, but by categorizing below 20kW as LT-3 and above 20kW as LT-4 the Commission has contradicted its own rulings and regulations.

- j) Since Hon. Appellate Tribunal for Electricity ('APTEL') was not setup at that time, in order to safe guard the Petitioner's own interest the Petitioner filed a complaint in Case No. 208 of 2005 on 31/05/2005 in Mumbai Suburban Consumer Disputes Redressal Forum('MSDRF') praying "That the opposite party be ordered and directed to provide to the complainant revised bills for the month of July 2004 to date and also continue to raise the bills treating the complainant under the category of LTPI" alongwith the interim relief of restraining the Respondent No.1 from disconnecting the electricity supply as per the provisions under Section 56(1)(b) of the Electricity Act, 2003. In response to the aforesaid complaint the MSDRF passed an interim Order dated 02/06/2005 restraining the Respondent No.1 from disconnecting the electricity supply after furnishing a Bank Guarantee with the Registrar MSDRF. However MSDRF in its final Order dated 11/08/2010 dismissed the complaint without getting into the merits of the matter on the issue of jurisdiction which was (a) Consumer as defined under section 2(15) of the EA 2003 is not a consumer as per Section 2(1)(d) of the Consumer Protection Act 1986 and (b) directed the complainant to go before MERC or any other authority. Thereafter the Order of MSDRF on the issue of jurisdiction was challenged in State Consumer Redressal Forum (SCRF). The State Consumer Redressal Forum by its Order dated 15/07/2011 upheld and confirmed the Order passed by MSDRF in Case no. 208 of 2005.
- k) Therefore the Petitioner has filed a Petition before this Commission under Sections 142, 146 and 129 seeking legal action against the Respondent No.1 directing them to levy single part tariff and refund of the excess amount of Rs. 13,75,000/- collected from him as per the provisions under Section 62(6) of the Electricity Act, 2003. The Petitioner has further sought rectification of all the tariff Orders pertaining to Respondent No.1 since 2004 as mentioned herein above.

5. The Commission, vide notice dated 04/08/2011, fixed an admissibility hearing in the matter on 6th September 2011 and directed the Petitioner to serve a copy of its Petition on the Respondents and Authorized Consumer Representatives.

6. Pursuant to the notice dated 04/08/2011 issued by the Commission, a hearing was held on 06/09/2011 wherein the Petitioner and representatives of the Respondent No.1 & the Respondent No.2 were present. During the hearing the Petitioner appraised the Commission of his grievances and made the averments as mentioned in his Petition.

7. During the hearing, Advocate of Respondent No.1 submitted that, since the year 2006 in each tariff determination proceedings, the Petitioner has raised the issue of two part tariff and after considering the same, the Commission has issued Tariff Orders specifying

two part tariff for various consumer categories. Therefore, the issue of two part tariff cannot be raised before the Commission and Hon'ble Appellate Tribunal for Electricity is the appropriate forum for the same. Regarding applicability of LTP-2 category to the Petitioner, it was submitted that, the consumption of the petitioner had gone up, therefore the Respondent No. 1 had levied two part tariff on the petitioner in the category of LTP-2 from October 2004 onwards, and in case the Petitioner has any grievance related to billing, he can approach Consumer Grievance Redressal Forum.

8. The Petitioner has sought that certain Orders passed by the Commission have to be rectified as they are ultravires the regulations framed by the Commission overlooking the objection raised. The prayer is "A. *The Hon'ble Commission should rectify the defects (alter the tariff orders and comply with the Regulations and the provisions of Electricity Act 2003).....*". However, the Commission is of the view that no such exercise can be undertaken as the Commission is *functus officio* after having passed the said Orders. This prayer is hence rejected as not maintainable.

9. All other prayers (B), (C), (D), (E), (F), (G), (I), (J), pertain to billing disputes. The law laid down by the Hon. Apex Court is that billing disputes ought to be adjudicated upon by the Consumer Grievance Redressal Forum set up under Section 42(5) of the EA 2003. As regards the submissions of the Petitioner that from October 2004 onwards Respondent No.1 continued to arbitrarily levy two part tariff of LTP-2 for connected load of more than 50HP when other similarly placed consumers with a similar connected load were considered as LTP-1, is a billing disputes which ought to be taken up before the Consumer Grievance Redressal Forum subject to law of limitation. As regards prayer (H) no further submission has been made or is required to be made in view of the position of law stated above. As regards prayer (K), no order as to costs.

Accordingly, Case No.110 of 2011 is disposed of.

Sd/-
(V.P. Raja)
Chairman