

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 147 of 2008

In the matter of

**Clarification about the Commission's directions contained in its order dated
05-05-2000 in Case No. 1 of 1999 regarding Service Line Charges (SLC) and its
interpretation and implementation by MSEB/MSEDCL.**

**Shri V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member**

Shri Vinod Sadashiv Bhagwat ... Petitioner

Versus

Maharashtra State Electricity Distribution Company Ltd. ... Respondent

ORDER

Dated: August 17, 2009

Shri. Vinod Sadashiv Bhagwat filed a Petition before the Commission on 27.01.2009 for refund of excess amount of Service Line Charges levied by MSEB to the consumers during the period from 1.11.1999 to 4.5.2000, with the following prayer:

“Hon’ble Maharashtra Electricity Regulatory Commission is requested that the difference of Rs. 15,000/- in the new and old electricity connection charges and interest at the rate which the Maharashtra State Electricity Board was charging to its then defaulters, which was ½ (half) per cent per week (Xerox copy enclosed-Annexure No.7) be paid to me for the period from 6-04-2000, till I actually get the difference. Hon. Commission is requested to pass similar orders for all consumers in the State during this period. Further, it is requested that I may be granted the cost of Rs. 5,000/- for this case.”

2. The Commission heard the Petitioner on 2.04.2009 and granted leave to the Petitioner to amend its Petition stating as to under which statutory provision could the Petition be admitted. The Commission directed the Petitioner to serve a copy of such amended Petition on the Respondent.

3. Shri Vinod Sadashiv Bhagwat submitted his amended petition on 20.04.2009.



4. The Petitioner in his amended Petition made the following submissions:
- a) Prior to the enactment of the Electricity Regulatory Commissions Act, 1998 (“ERC”), the power to determine Tariff was vested in the Licensee, in this case with the Respondent. The Respondent has fixed the SLC in the year 1991 and the schedule of SLC was circulated vide Respondent’s Departmental Circular [Commercial] No. 486 dated 8.08.1991.
 - b) The ERC Act 1998 came into force w.e.f. 25.04.1998; and as per Section 22 and 29 of the said Act the power to frame Tariff were vested in the Regulatory Commissions and hence any Rule/Regulation/Circular issued by the Respondent after 25.04.1998 in respect of any changes relating to supply of electricity, including release of electricity connections are void and are not binding upon the consumer. The Commission was constituted on 5.08.1999 and the impugned Circular No. 631 was issued on 22.10.1999; i.e. after constitution of this Commission and without the approval of the Commission and hence is void and unenforceable.
 - c) The Commission has passed the detailed Tariff order in Case No. 1 of 1999 on 5.05.2000; wherein on page No. 48, the Commission has observed as follows:

“The Commission is of the view that the terms and conditions of supply issued by the MSEB in their order impinges on the payment of charges by the consumers and are subject to review by the Commission in view of Section 29(1) and 29(4) of the ERC Act 1998. In particular, Section 29(4) of the Electricity Regulatory Commissions Act 1998 states that the Board shall observe the methodologies and procedures specified by the Commission from time to time in calculating the expected revenue from charges it is permitted to recover and in determining the tariff to collect those revenue. Further, Section 52 of the Electricity Regulatory Commissions Act, 1998 states that save as otherwise provided in Section 49, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. Therefore, charges such as service line charges, distribution charges, meter rent, etc., charged by the MSEB will have to be approved by the Commission. The Commission, therefore, upholds the objection that the MSEB should desist from issuing such circulars. The Commission further observes that the circulars issued on this subject after the setting up of the Commission and without its approval may be kept in abeyance and the approval of the Commission be obtained before they are put into effect.”

- d) The Respondent filed two petitions bearing No. MERC Appeal No. 1 of 2001 against the order passed in Case No. 1 of 1999 and MERC Appeal No. 2 of 2001 against the order passed in Case Nos. 10 & 11 of 1999; wherein an interim order was passed by the Hon’ble High court directing the Respondent to maintain the position as on 5.08.1999. Thus in view of that order, also, the impugned Circular No. 631 issued on 22.10.1999; is void and ineffective.



- e) The Commission has passed an Order on 10.01.2002 in Case No. 1 of 2001; wherein on page no.20, the Commission has observed as follows:

“The MSEB should continue to charge Service Line Charges (SLC) as per the guidelines prevailing as on 5th August 1999, i. e. the date the Commission came into existence, till such time as the SLC are modified by the Commission.”

Thus in view of this subsequent order also, the impugned Circular No. 631 issued on 22.10.1999; is void and ineffective.

- f) The Commission has passed an Order on 10.03.2004 in Case No. 2 of 2003; wherein on page no.105, Commission has observed as follows:

“The Commission is of the opinion that the determination and payment of Service Line Charges is within the scope of the ‘Terms and Conditions of Supply’. The Commission will take up this issue along with approval of the ‘Terms and Conditions of Supply’ after the issue of this Tariff Order. The Commission also clarifies that the income from SLC and service connection charges are a capital receipt in the books of the MSEB, and cannot be recorded as revenue receipts. Further, the Capital Base is reduced to that extent, while computing the reasonable return.”

- g) Thus due to Tariff Order dated 5.05.2000 and two successive Tariff orders of the Commission the rates of SLC remained unchanged since 5.08.1999 till 8.09.2006 (i.e. date on which the ‘Schedule of Charges’ was approved by the Commission and it came into force). And on 5.08.1999 the rates of SLC applicable were as per Circular No. 486. And thus it was incumbent upon the Respondent to follow the same rates.

- h) There is no ambiguity in any of the orders passed by the Commission and it is evident from the fact that the Respondent has not sought any clarification from the Commission in that respect. That it is also evident as the Respondent has filed an appeal before the Hon’ble Bombay High court the Respondent has availed expert legal advice in this matter, no inference can be drawn by any stretch of imagination that it was a bonafide mistake on the part of Respondent. The Respondent had an opportunity to rectify this mistake when the Petitioner brought this fact to the notice of the Respondent by filing a complaint before the District Forum. However, unfortunately the Respondent did not oppose the complaint but filed an appeal before the State Commission and put forth a case which the Respondent very well knew is against the Orders passed by the Commission. Thus the Respondent is not only guilty of disobedience of orders of the Commission but is also guilty in justifying the wrong.

- i) The Petitioner honestly feels that the very conduct of the Respondent in implementing Circular No. 631 instead of Circular No. 486 amounts to disobedience of the orders of the Commission, and is within the purview of Regulation No. 83 of MERC (Conduct of Business) Regulations 1999; read with Section 45 of ERC Act 1998. So also it is within the purview of Regulations No.



92 & 94 of MERC (Conduct of Business) Regulations 2004; read with Sec 142 & 146 of the Electricity Act 2003.

5. With the above background, the reliefs sought in the above Petition are as under:

- i) *It may kindly be clarified as to whether the interpretation of the Tariff Order dated 05.05.2000 in respect of charging of SLC by the Respondent and implementation of Circular No. 631 is correct and valid?*
- ii) *It may kindly be clarified as to whether the act of respondent in recovering the SLC as per Circular No. 631 instead of Circular No. 486 since 1/11/1991 till 5/05/2000 in spite of order dated 5.05.2000 of this Hon'ble Commission and subsequent Tariff orders dated 10.01.2002 and 10.03.2004 is valid?*
- iii) *If not suitable directions be given to the Respondent to rectify the wrong along with appropriate compensation to the Petitioner and all other sufferers.*
- iv) *All other just and equitable reliefs be granted for the effective adjudication of the subject matter involved in this petition and for it's implementation.*

6. The Commission, vide its Notice dated 29.04.2009, scheduled the hearing in the matter on 7.05.2009.

7. Shri Suresh Tukaram Valekar, Chief Engineer (Dist) has submitted reply in the case on behalf of Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) on 7.05.2009.

MSEDCL in its reply submitted that:

- a) Service Line Charges at the relevant time were meant to incur expenditure to cover the total cost of providing supply facility to the premises of the consumer and to cover expenditure on upper system to strengthen the same. The charges were recovered in accordance with the rules applicable at that time.
- b) SLC was recovered from the appellant as per Circular No. 631 dated 22.10.1999. By the said circular, MSEDCL increased service line charges with effect from 1.11.1999.
- c) The Commission by its Order dated 5.05.2000 kept the circular in abeyance till further order. Since there was no order passed by the Commission, MSEDCL recovered the SLC charges as per applicable circular at the relevant time till the Commission's order dated 8.09.2006 passed in Case No. 70 of 2005. MSEDCL in pursuance of the Order dated 5.05.2000 issued a Circular No. 647 dated 27.06.2000 with instruction to recover SLC from the consumer at the rate prevailing prior to the revised service line charges. It is a fact that MSEDCL recovered the SLC charges from the Petitioner strictly in accordance with the circular which was applicable at that time and the said circular was not challenged by the Petitioner at any point of time.
- d) SLC charges recovered by MSEDCL are prior to the coming into force of the Supply Code and Schedule of Charges and the same should not be determined as per the law prevailing under the said supply code/ Schedule of Charges.



8. At the hearing held in the matter on 7.05.2009, Shri. Vinod Sadashiv Bhagwat attended the hearing along with Shri. Pratap Hogade, who represented the Petitioner in the Commission's proceedings. The Petitioner submitted that the SLC of Rs. 5,000/- as per the rates mentioned in MSEDCL's Circular No. 486 was applicable for the period of eight years from year 1991 to 1st November 1999 and thereafter for the period of six years from 5th May, 2000 to 7th September 2006. SLC applicable between the above mentioned periods was Rs. 20,000/-, thus the said Petition falls in the purview of the Commission. The Petitioner referred to certain abstracts from different tariff orders issued by the Commission as follows:

Order in Case No. 1 of 2001

“Service Line Charges

The MSEB should continue to charge Service Line Charges (SLC) as per the guidelines prevailing as on 5th August 1999, i. e. the date the Commission came into existence, till such time as the SLC are modified by the Commission.”

Order in Case No. 2 of 2003

“The Commission is of the opinion that the determination and payment of Service Line Charges is within the scope of the ‘Terms and Conditions of Supply’. The Commission will take up this issue along with approval of the ‘Terms and Conditions of Supply’ after the issue of this Tariff Order. The Commission also clarifies that the income from SLC and service connection charges are a capital receipt in the books of the MSEB, and cannot be recorded as revenue receipts. Further, the Capital Base is reduced to that extent, while computing the reasonable return.”

The Petitioner submitted that the number of consumers who paid such excess amount may be one lakh or more and the amount may vary between Rs. 30-40 Crores, it was an excess collection of money and it is against the Commission's Orders.

9. Shri. Valekar,(CE), Shri. Dhande (SE), Shri. S.D.Surwade (EE) and Shri. Vyadande (EE) represented MSEDCL. Smt. Deepa Chawan, and Shri. Kiran Gandhi, Advocates appeared on behalf of MSEDCL. MSEDCL submitted that the Petitioner has put an allegation, that the distribution licensee has disobeyed willfully and intentionally the orders passed by the Commission and the Petitioner is also asking for compensation in this case. It means that the Petitioner is seeking directions in terms of refund etc.,that will not fall within the ambit of this Commission's jurisdiction. The contention raised by the Petitioner is that MSEDCL has disobeyed and not complied with the order dated 5.05.2000 passed by the Commission and the subsequent orders quoted by the Petitioner are not relevant to these arguments. MSEDCL further submitted that, when the first tariff order was passed on 5.05.2000, the Commission did not set aside the circular No, 631 dated 22.10.1999 but kept it in abeyance. Accordingly, after 5.5.2000, MSEDCL has not charged the SLC charges as per the Circular No.631 dated 22.10.1999. Also the tariff Order cannot be made applicable retrospectively and hence there was no contempt as alleged. MSEDCL submitted that this is not an appropriate forum for such grievances. When the matter came up before the Commission and an order was passed in the matter



on 5.05.2000, the Commission could have directed, if it felt necessary, to refund the amounts which have been collected during the months mentioned in the Petition. The Public Hearings were held in the matter leading something into the order to allege a contempt which purportedly took place 9 years back and that too with retrospective operation of the order. This is not sustainable.

10. Having heard the parties and after considering the material placed on record, it is clear that issue involved in this case is recovery of SLC during the period 1.11.1999 to 4.5.2000.

The facts and issues involved in the case are summarized as follows:

- i) Prior to enactment of the Electricity Regulatory Commissions Act 1998, powers to fix the tariff / standardise the rates of charges for electricity supply was vested with state electricity boards. Thus the Respondent (erstwhile MSEB and herein after referred as MSEDCL) has fixed the SLC to be recovered from the consumer vide departmental circular (Commercial) No. 486 dated 8.08.1991.
- ii) Electricity Regulatory Commissions (ERC) Act 1998 came into force on 25th April 1998. The relevant Sections of ERC Act 1998 are reproduced as under:-

Section 29 (1)

“ Notwithstanding anything contained in any other law, the tariff for intra-State transmission of electricity and the tariff for supply of electricity, grid, wholesale, bulk or retail, as the case may be, in a State (hereinafter referred to as the "tariff"), shall be subject to the provisions of this Act and the tariff shall be determined by the State Commission of the State in accordance with the provisions of this Act.

Section 29 (4)

“The holder of each licence and other persons including the Board or its successor body authorised to transmit, sell, distribute or supply electricity wholesale, bulk or retail, in the State shall observe the methodologies and procedures specified by the State Commission from time to time in calculating the expected revenue from charges which he is permitted to recover and in determining tariffs to collect those revenues”

- iii) MERC was constituted on 5.08.1999 and issued Conduct of Business, Regulation on 27.12.1999 (date of commencement). The stipulated Regulation states that *“No utility shall fix any tariff for intra-state transmission, distribution or supply of electricity and terms and conditions for the supply of electricity, without the general or specific approval of the Commission”*.
- iv) MSEB had issued a Depttmental Circular (Commercial) No. 631 dated 22.10.1999 (i.e after setting up of the MERC) for revision of SLC charges to be recovered from the consumers.



- v) Petitioner Shri Vinod Sadashiv Bhagwat had applied for the new connection on 30.03.2000 and received firm quotation from the MSEB on 31.03.2000. The quotation was of Rs. 21,000/- (i.e. Rs. 20,000/- for SLC and Rs. 1000/- for LT cable charges). The Petitioner has paid the said amount which was Rs. 15,000/- higher than the amount prior implementation of circular dated 22.10.1999.
- vi) The Commission in its Order dated 5.05.2000 in Case No. 1 of 1999 (i.e. Determination of tariff applicable to various categories of consumers of the Maharashtra State Electricity Board) had approved the tariff for MSEB. The Commission in this Order also mentioned that *“charges such as service line charges, distribution charges, meter rent, etc., charged by the MSEB will have to be approved by the Commission. The Commission, therefore, upholds the objection that the MSEB should desist from issuing such circulars. The Commission further observes that the circulars issued on this subject after the setting up of the Commission and without its approval may be kept in abeyance and the approval of the Commission be obtained before they are put into effect.”*
- vii) MSEDCL has issued Departmental Circular (Commercial) No. 647 dated 27.06.2000, to all their concerned field officer for recovery of service line charges from prospective consumers as per pr-revised scale of charges.(i.e. Rs 5000/-)
- viii) Petitioner Shri Vinod Sadashiv Bhagwat has approached different consumer forums for refund of additional SLC recovered during the period 1.11.1999 and 4.05.2000.
- ix) Nasik District Consumer Dispute Redressal Forum ruled in favour of Petitioner, which was challenged by the MSEDCL in State Consumer Dispute Redressal Commission (SCDRC) where SCDRC quashed and set aside the order passed by the District Forum on the grounds that there was no allegation of deficiency in service.

The Petitioner further approached the respective forums formed under Electricity Act, 2003 i.e. IGRF, CGRF and Electricity Ombudsman. All these forums have dismissed the case on the ground of Regulation 6.7(d) of MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 which states that *“where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.”*

- x) The grievance of the Petitioner is the amount recovered by MSEB/MSEDCL, as SLC during the period 1.11.1999 to 4.5.2000 (i.e. between issue of new circular by MSEB/MSEDCL and the date of commencement of Tariff order issued by MERC).
- xi) The main issue involved here is whether the circular dated 1.11.1999 issued by MSEB enhancing SLC from Rs 5000 to Rs 20,000 was legally tenable.



11. The Commission is of the view that after the enactment of ERC Act 1998, for any revision in the tariff including charges for SLC etc, MSEB should have approached the Commission for determination of charges to be recovered as per provisions under Section 29(1) & 29(4) of ERC Act 1998. In the subject case, MSEB has unilaterally issued circular dated 22.10.1999 revising service line charges from Rs 5000/- to Rs 20,000/- without seeking permission from the Commission as required under statute. In the tariff Order issued by the Commission dated 5.05.2000 in Case No. 1 of 1999, the Commission has observed and directed that the Circulars issued on this subject after the setting up of the Commission and without its approval may be kept in abeyance and the approval of the Commission be obtained before they are put into effect.

12. MSEDCL in its reply stated that the first tariff Order was passed on 5.05.2000, the Commission did not set aside the Circular No. 631 dated 22.10.1999 but kept it in abeyance. After issue of tariff Order, MSEDCL has not charged the SLC charges as per the Circular No.631 dated 22.10.1999. As MSEB has stopped collecting charges SLC as per their Circular dated 22.10.1999, the Commission is of the view that there is no issue of non-compliance of the tariff Order and contempt as alleged by the Petitioner. However, the issue involved in this case is whether the circular issued dated 22.10.1999 by MSEB for revision of SLC has the legal sanctity. The Commission has amply made it clear in the tariff Order dated 5.5.2000 that the said Circular was issued without approval of the statute as required under prevalent law.

13. In the circumstances, the affected consumers may approach MSEB/MSEDCL individually to seek refund of the extra SLC amount (over and above the amount as per earlier departmental circular (Commercial) No. 486 dated 8.08.1991) collected as per Circular dated 22.10.1999. In case they have further grievance in the matter, they may approach the concerned Consumer Grievance Redressal Forums to seek remedy.

14. The Commission further directs to MSEDCL that they should widely publish that the extra SLC charges recovered as per Circular issued dated 22.10.1999 shall be refunded and hence affected consumers may approach the MSEDCL for the same.

The present petition stands disposed of with the above observations.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V. P. Raja)
Chairman



(P.B. Patil)
Secretary, MERC