

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**Case No. 120 of 2011**

**In the matter of**

**Petition filed by Anjaya Rajam Anparthi under Sections 61 (b), 62 (5) and 86 (1) (a) of the Electricity Act, 2003 challenging the power distribution franchisee agreement signed between Maharashtra State Electricity Distribution Company Limited and M/s Spanco Limited on February 23, 2011.**

Anjaya Rajam Anparthi.

..... Petitioner

v/s

1. Maharashtra State Electricity Distribution Co. Ltd

2. M/s SPANCO Ltd.

..... Respondents

**and**

**Case No. 121 of 2011**

**In the matter of**

**Petition filed by M/s Maharashtra Veej Grahak Sanghatna against MSEDCL, under Sections 61(b),61 (d),62(5), 86(1)(a) & seventh proviso to Section 14 of Electricity Act 2003, for checking contracts as per the various provisions of Electricity Act. 2003 entered between MSEDCL and Distribution Franchisees, verify the exact working of the Distribution Franchisee and setting standards and rule as per the Law.**

Maharashtra Veej Grahak Sanghatna .

.....Petitioner

v/s

Maharashtra State Electricity Distribution Co. Ltd

..... Respondent

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

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

**ORDER**

**Dated: 26 August,2012.**

Shri Anjaya Rajam Anparthi, filed a Petition numbered as Case No. 120 of 2011 under sections 61 (b), 62 (5) and 86 (1) (a) of the Electricity Act, 2003 (“EA 2003”) challenging the power distribution franchisee agreement signed between Maharashtra State Electricity Distribution Company Limited (MSEDCL) and M/s Spanco Limited on February 23, 2011. Maharashtra Veej Grahak Sanghatna through its President Shri Pratap Hogade also filed a Petition numbered as Case No. 121 of 2011 under Sections 61(b), 61 (d), 62(5), 86(1)(a) & seventh proviso to Section 14 of the Electricity Act, 2003 (“EA 2003”) essentially seeking examination of Distribution Franchisee Agreements awarded by MSEDCL and to set standards thereof.

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

In Case No. 120 of 2011

“

- a. *Accept the Petition and permit to place on record any details, if required*
- b. *Assess/scrutiny the financial matters whatever may be in distribution franchisee agreement.*
- c. *Cancel the provisions of Rs. 60 crore made by MSEDCL in the agreement.*
- d. *Direct MSEDCL to recover the funds being spent in three division- Mahal, Civil Lines and Gandhibagh under R-APDRP scheme from Franchisee.*
- e. *Direct MSEDCL to charge rent and other charges as per market value from franchisee for using buildings and any other estate and immovable property of MSEDCL*
- f. *Stay on handing over the power distribution of three divisions to M/s Spanco Limited during the pendency of the petition*
- g. *Cancellation of distribution franchisee agreement if there are any negative or loss making result in the audit of Bhiwandi Franchisee and direct the MSEDCL to revise the DFA.*

- h. In case of irregularities and shortcomings in the distribution franchisee agreement, the Honorable Commission should cancel agreement and laid down guidelines for guidance of MSEDCL
- i. Any other order or relief as this Hon'ble Commission deem fit.”

In Case No. 121 of 2011

- a. महावितरणने अद्यापपर्यंत राज्यातील विविध भागांसाठी विविध 'डिस्ट्रिब्युशन फ्रॅन्चाइझी' शी जे जे करार केले आहेत, त्या सर्व करारांची सदर याचिकेत नमूद केलेल्या विविध कायदेशीर तरतूदींच्या आधारे व निकषावर संपूर्ण तपासणी करणेत यावी. सदरच्या तपासणी व छाननीमध्ये कायद्यातील तरतूदीशी विसंगत बाबी आढळल्यास त्यासंदर्भात वितरण पारवानाधारक 'महावितरण' कंपनी योग्य ते आदेश देणेत यावेत.

(Checking the contract entered between MSEDCL & Distribution Franchisees at the various places at state of Maharashtra on the basis various legal provisions and standard mentioned in present petition. Issue appropriate orders to the MSEDCL in case of proved deviation from legal provision).

- b. 'डिस्ट्रिब्युशन फ्रॅन्चाइझी' यांचे कार्यक्षेत्रातील वीजग्राहकांच्या हिताच्या दृष्टीने विद्युत पुरवठ्याची गुणवत्ता, सातत्य, तक्रारी व संबंधित सर्व कृति मानके यांचे आधारे व निकषावर प्रत्यक्ष कामकाजाचा आढावा (Performance Review) घेणेत यावा. सदर आढाव्यामध्ये कृति मानकांचा भंग करणाऱ्या बाबी आढळल्यास त्यासंदर्भात संबंधितास योग्य ते आदेश देणेत यावेत.

(To take performance review on the basis of Supply, Quality, Continuity, complaints, Standard of Performance taking into consideration interest of the Electricity Consumer in the working area of Distribution Franchisee )

- c. राज्यातील सर्व वीजग्राहकांच्या हिताच्या व योग्य 'टॅरीफ' च्या दृष्टीने अशा 'डिस्ट्रिब्युशन फ्रॅन्चाइझी' चे बीडींग डॉक्युमेंट्स, करार, कार्यप्रणाली, गुणवत्ता, भांडवली खर्च, कृति मानके, मुदत इ. सर्व बाबी कायद्यातील तरतूदीनुसार मा. आयोगाच्या कार्यक्षेत्र व नियंत्रणाखाली येतात अशी अर्जदाराची धारणा आहे. यासंबंधी कायद्यातील तरतूदीनुसार योग्य ते निकष, नियम, विनियम, निर्बंध इ. बाबतीत मा. आयोगाने योग्य वाटेल ती कार्यवाही करणेत यावी व आवश्यक ते आदेश देणेत यावेत.

(It is genuine relief of the Applicant/Petitioner that, as per the legal provision from the point of view of interest of various electricity consumer and appropriate Tariff such distribution franchisee's bidding documents, agreements, contracts, working procedure, quality, capital expenditure,

*standard of performance etc comes under the jurisdiction and control of the Commission in view of the above the Commission may pass the appropriate and necessary order).”*

3. The factual matrix as averred by the Petitioner, Shri Anjaya Rajam Anparthi in Case no. 120 of 2011, briefly stated are as under:

- i. The Petitioner submitted that, he is deeply interested in proper functioning of power sector . The Petitioner further submitted that he is a Journalist with central Indian largest circulation English Paper “Hitavada” for last 10 years and reporting news related to power sector for last four years and also filed Suggestions and Objections during the public hearings of ARR & ZLS.
- ii. Further, the Petitioner submitted that, the Respondent No.1 has come up with power distribution franchisee model. Under the model the Respondent No.1 had proposed to hand over the power distribution of three divisions of Nagpur City (Nagpur Urban Circle) – Mahal, civil lines and Gandhibagh. As there were many protests from consumers, various associations and reputed social organizations of Nagpur and also shortcoming in the process of power distribution franchisee agreement signed between MSEDCL (Res. No. 1) and M/s Spanco Ltd. (Res. No. 2) and therefore the Petitioner submitted the present petition before Commission.
- iii. The Petitioner contended that, the Franchisee agreement should be conducted on commercial principles as per Section 61(b) of EA, 2003. Therefore the Commission is requested to calculate whether the power distribution franchisee agreement will make profit or not. If not, then the Commission should come up with such modifications that will make profits.
- iv. The Petitioner submitted that, the MSEDCL has committed to give Rs.60 crore to Respondent No. 2 for some developmental works. As per Section 62(5), the Commission may require the Respondent No.1 to comply with procedures whatever may be suggested by the Commission. The MSEDCL has denied taking the suggestions and objections from the consumers of Nagpur before handing over the three divisions to M/s Spanco Ltd. thus destroying the interest of the public.
- v. The Petitioner further submitted that, as per Section 86 (1) (a) the Commission has to decide the cost of power supply to be supplied by MSEDCL to M/s Spanco Ltd. But the MSEDCL has decided to supply power on bulk basis at a cost fixed by its own.

- vi. The Petitioner submitted that, there were demands on MSEDCL from all corners to hold public hearing or constitute a joint committee of MSEDCL and consumers before signing the agreement and handing over the distribution. But the MSEDCL denied all the demands and also failed to maintain the transparency in the entire process.
- vii. The Petitioner submitted that, the performance of these three divisions has improved from 2006 in spite of any development in infrastructure. MSEDCL had not done any major work of infrastructure developments in these three divisions. Why MSEDCL selected these three divisions first than other divisions having high distribution losses than these three divisions? The employees of MSEDCL requested to give them two years time to bring the losses to 17 per cent. But MSEDCL denied the request. Thus the entire background behind the agreement is incorrect.
- viii. The Petitioner further submitted that, the MSEDCL has to take the approval of the Commission regarding the amount to be paid by the franchisee to MSEDCL and to decide the financial terms in franchisee agreement. The MSEDCL has decided to hand over its 36 buildings without taking any rental charges. If the buildings are allowed to be used free of cost, MSEDCL would incur revenue loss of Rs.75 crore.
- ix. The Petitioner further submitted that, the MSEDCL had handed over the Bhiwandi area to franchisee M/s Torrent Ltd. As per the Franchisee Agreement of Torrent, the ABR and other relevant data has to be audited by an independent agency, however till date, no such audit has been undertaken for Bhiwandi area. The Commission in its tariff order dated 12.09.2010, directed the MSEDCL to submit the audit report within three months, still the audit reports are awaited. Without knowing the profit or loss of Bhiwandi franchisee model, the MSEDCL has signed the franchisee agreement with Respondent No.2 and it is clearly against the consumer interest.
4. The factual matrix as averred by the Petitioner, represented by Shri Pratap Hogade in Case no. 121 of 2011, briefly stated, are as under:
- a) MSEDCL has appointed distribution franchisees in different parts of the State of Maharashtra as per the seventh proviso to Section 14 of the EA 2003. MSEDCL first appointed Torrent in Bhiwandi area, and now in this year Spanco Ltd at Nagpur and M/s GTL Ltd. Company at Aurangabad.
  - b) After starting the actual work by the Franchisee at Nagpur and Aurangabad, as provided in MERC (SOP) Regulations, the Consumers face worst experience of service of franchisee, the newspaper cuttings are attached with the petition.

- c) Due to the Franchisee agreement and the tariff rate of the franchisee the tariff of the rest of the consumers in the State is increasing. It was observed that the Commission has no control over the appointment of the franchisee and their rules etc. In the interest of the Consumers at large this Petition is submitted before the Commission.
  - d) The Commission in its Order dated 12.09.2010, in Case No. 111 of 2009 decided the power purchase cost of the MSEDCL as Rs.267 paise per unit. In subsequent Orders of the MSPGCL the power purchase cost is increased. Also the tariff for Torrent decided is just Rs.233 paise per unit. And for Spanco Rs.270 paise per unit is decided.
  - e) The impact of the difference in high power purchase cost and the sale at low cost by MSEDCL to the franchisee will increase the tariff of the rest of the consumers of the State. Therefore all the issues related to franchisee are in the jurisdiction of the Commission.
  - f) As per the Section 61(b), (d), Section 62(5) and Section 86(1)(a), the Commission has power to decide the bulk or retail supply tariff. As per Section 86 (1) (a) the Commission earlier decided the BST for MPECS. But the BST for Torrent, Spanco, & M/S GTL LTD. was decided by the MSEDCL.
  - g) As per Section 61(b) of EA, 2003, the electricity supply was to be done on commercial principles. And all the distribution expenditure to be recovered. However the agreement executed by MSEDCL was not on Commercial principles and these agreements are unable to recover the expenditure, therefore the burden is shifting on other consumers.
  - h) MSEDCL is violating the provisions of the seventh proviso to Section 14, as MSEDCL is liable for the acts of the Franchisee as the franchisees are unable to supply power regularly on continuous basis.
5. As the issues raised in both the petitions are similar in nature, the Commission, vide its Notices dated 25/08/2011 and 26/08/2011, fixed a common admissibility hearing in both the matters on 15<sup>th</sup> September 2011 and directed the Petitioners to serve a copy of its above Petition, along with its accompaniments, to the Respondents and authorized consumer representatives, Further the Respondents were directed to submit comments, if any, on the above mentioned Petitions, with a copy served to the Petitioner and authorised consumer representatives.
6. Pursuant to the Notices dated 25/08/2011 and 26/08/2011 issued by the Commission, a common admissibility hearing was held on 15/09/2011, wherein the Petitioners and representatives of MSEDCL and Spanco Ltd. and consumer representatives were

present. During the hearing the Petitioner, Shri Anjaya Rajam Anparthi reiterated the facts of the case. Shri Pratap Hogade reiterated his case.

7. Smt. Deepa Chawan, Advocate appearing for MSEDCL in common reply objected to the admission of the Petition and to the grant of any reliefs therein. MSEDCL further submitted that in Writ Petition No. 5855 of 2007 the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, referred the matter to MERC in respect of an earlier franchisee arrangement. Pursuant to the directions of the Hon'ble High Court, the matter was heard by the Commission in Case No. 98 of 2007 and an Order dated 07.05.2008 came to be issued. In the said Case, the Commission has considered various aspects and objections relating to the appointment of franchisee for the subject Nagpur Circles. Thus, all these issues have already been considered in a similar situation. Thus, this Petition is not maintainable and be rejected.
8. Ms Jyoti Singh, Advocate appearing for M/s Spanco Ltd. Respondent No.2 in Case No.120 of 2011 adopted the submissions of MSEDCL.
9. The Consumer representatives, Shri Shantanu Dixit, Prayas, Shri Ashok Pendse, TBIA and Shri R. B. Goenka, VIA essentially supported the petitioners and submitted that the Commission has a role to interfere in the franchisee agreement. Franchisees cannot work as traders; it has to act only as an agent of MSEDCL, however franchisees are infact acting as traders. The Commission has to protect the interest of the consumers. Further in Case No. 62 of 2009, the Commission held that the Distribution franchisee should be selected and appointed through a competitive bidding process to ensure complete transparency and competition. MSEDCL has not followed transparency in the process and executed franchisee agreement benefitting the Respondent No.2. Thus, the Commission is to admit the matter and allow the prayers of the Petitioner.
10. The Commission after hearing all the parties directed the Petitioners to submit their reply on the point of admissibility of the Petitions, and the matter stood over to 29.09.2011.
11. Subsequently, an Intervention Application was filed by the Maharashtra State Electricity Workers Federation on 20.09.2011.
12. During the hearing on 29.09.2011, the Commission allowed the intervention application filed by Maharashtra State Electricity Workers Federation, and directed the representative of the said intervener to submit their submission only on the ground of maintainability of both the Petitions.
13. The intervener, submitted as under :
  - a. That prior to Spanco Ltd, earlier MSEDCL had given these three Divisions of Nagpur on franchisee basis to M/s. Crompton Greaves Ltd. That time consumers and social organizations had opposed that franchisee agreement

and a legal battle was fought. The Crompton agreement was for 3400/- crores for the period of 15 years, which was opposed and in the later stage the said agreement could not survive. Now the same three divisions were given to Spanco Ltd. at the price of Rs. 5350/- crores. Had the previous agreement would not have been opposed MSEDCL would have been put to loss of Rs. 5350/- minus 3400/- i.e. Rs. 1950 crores.

- b. MSEDCL has favored M/s Spanco Ltd similar to M/s Crompton, while signing the agreement thus causing losses of several hundred crores to the income of MSEDCL which will adversely affect consumer interest.
- c. The distribution franchisee has not paid the revenue realized from the consumers of these three divisions within the stipulated time decided in the agreement. Thus contravened the provisions of the agreement. Spanco made a financial default by not paying Rs. 151.18 crore to the MSEDCL. Similarly Respondent No. 2 the G.T.L, Distribution franchisee for Aurangabad has failed to remit the demand raised by MSEDCL and is in default of Rs. 141.32 crores. Further MSEDCL through this agreement benefitted the franchisee for crores of Rupees and burdened the losses on the consumers of electricity.
- d. Respondent No. 2 failed in consumer service and consumers billing process.

14. The Petitioner, submitted as under :

- a. The Distribution Licensee failed to follow the directives issued by the Commission in Case No. 62 of 2009. That MSEDCL adopted discriminatory process for each franchisee. The franchisees are playing the role of trader and making profits, though they are the agents only. Transparency is not maintained. Care of consumers is not taken. These directions are violated, hence it attracts penalty, punishment and further directions under Sections 142, 146 and 149 of the E Act 2003.
- b. The Franchisee is to do the business of the Distribution Licensee and therefore all rules and legal provisions which are applicable to Distribution Licensee are also applicable to the Franchisee by implication and in view of the specific provisions of Sec. 182 r/w Sec. 211 of the Indian Contract Act.
- c. Hence the Commission may consider the Petition.

15. The common written submissions of Respondent No.1, MSEDCL briefly stated are as follows:

- i. MSEDCL being a Distribution licensee is entitled to appoint a franchisee for a particular area of supply. First such step was the appointment of Torrent Power Ltd for its Bhiwandi Area of Supply. This experiment has been a



success on all fronts. MSEDCL continues to remain responsible and accountable in all respects in / for its area of supply. Therefore, the present petition is not maintainable under the provisions of the EA 2003.

- ii. In respect of earlier franchisee arrangement contemplated by the Respondent for the subject area of supply in Nagpur, pursuant to directions issued by the Hon'ble High Court, in Writ Petition No. 5855 of 2007, the matter was heard by the Commission vide case No. 98 of 2007 and issued Order on 07.05.2008. In the said Case the Commission has considered the various aspects and objections relating to the appointment of franchisee for the subject Nagpur Circle. Thus all these issues have already been considered in a similar situation. In the said Order the Commission finds that there is a net benefit to the MSEDCL on account of appointment of Franchisee. Thus this Petition is not maintainable and be rejected.
- iii. All the developments regarding the bid process for appointment of Distribution Franchisee by MSEDCL had been submitted to the Commission for appraisal from time to time.
- iv. In view of the above submissions, firstly the Petition is not maintainable and is without jurisdiction. Secondly, this Commission had an occasion to consider the appointment of franchisee for the subject area of Nagpur, on an earlier occasion and the Orders passed therein have attained finality. Under these circumstances the present Petition ought to be rejected at admission stage itself with costs.

16. Respondent No. 2, M/s Spanco Ltd. also filed their reply to the Petition, briefly stated, as follows:

- i. M/s Spanco Ltd. opposing the admission of the Petition said that the Petition is not maintainable. Further, M/s Spanco Ltd. adopted the submissions of MSEDCL. MSEDCL is a distribution licensee under the provisions of EA 2003 having license to supply electricity in certain areas in the state of Maharashtra and MSEDCL is entitled to supply electricity through franchisee within its area of supply. Respondent No. 2 is in the business of creating technology Infrastructure to help drive government efficiency across key sectors and caters to large complex Technology Infrastructure Projects across Government, Power and Telecom service provider's space. For purpose of retail sale and supply of Electricity in three divisions of Nagpur, MSEDCL selected M/s Spanco Ltd. through competitive bidding process. And entered into a Franchisee Distribution Agreement dated 23.02.2011.
- ii. The Commission has already considered the apprehensions and issues raised by the Petitioner in Case no. 98 of 2007 and expressed its views on the

subject. Thus the franchisee arrangement is competitive, transparent and viable arrangement which safeguards the interests of consumers and public.

- iii. Further the Writ Petition No. 345 of 2011 has been filed before the Hon'ble Bombay High Court, Nagpur bench, i.e. Janmanch v/s State Of Maharashtra & ors., wherein the MSEDCL and the present Respondent No.2 have also been made parties and therein has sought reliefs on the similar ground and for the similar prayers and the said Writ Petition is still pending for admission before the Hon'ble High Court.
  - iv. The Execution of distribution franchisee Agreement between Respondent No.1 & 2 was through an open tender process. The tender documents were analyzed and scrutinized as per the bidding procedure and the same was in the public domain. Thus the interpretation sought to given to section 62 (5) of the EA 2003 by the Petitioner is denied.
  - v. Respondent No.2 denied that the cost is decided on its own by MSEDCL. MSEDCL had decided basic benchmark tariff and thereafter the bidders quoted the power purchase cost based on their assessment of loss reduction. The regular procedure to determine the price was applied by the MSEDCL. The process was fair and transparent. Thus the respondents have not acted in contravention of Section 86 (1) (a) as alleged or at all.
  - vi. MSEDCL agreed to fund Rs. 60 Crores to respondent No.2 as franchisee over a period of 5 years. The amount of 60 Crores has not been paid to Respondent No. 2. It is only an arrangement for facilitating the Respondent No. 2 as franchisee in effective distribution of electricity.
  - vii. It has caused a tremendous destruction due to major storm in all the three divisions under the franchisee which was successfully restored within 48 hours by the franchisee. The Respondent No.2 as franchisee will use distribution assets of Respondent No.1 Licensee as per Distribution Franchisee Agreement. Clause 5.1 of the distribution franchisee agreement sets out the 'Right to use' the licensee's Distribution Assets.
  - viii. In view of the submissions, the present Petition is not maintainable, devoid of any merit and ought to be dismissed with costs.
17. The third hearing was held on 03/05/2012, wherein the Petitioner, Intervener and representatives of MSEDCL and Spanco Ltd. were present. During the hearing the Petitioner, Shri Pratap Hogade submitted his views on Shunglu Committee Report which include the chapter on franchisee. Shri Pratap Hogade, on behalf of Shri Anjaya Anparthi submitted that, in the franchisee area i) the losses are high ii) the recovery collection is not properly done iii) the services provided are also not good and iv) there should be some control on the high failure rate of power transformer .Shri Mohan

Sharma (Intervener) explained the problems faced by the consumers due to the inefficient and unreliable services provided by the franchisee.

18. Having heard the parties and after considering the material placed the Commission is of the view that the first essential requirement to proceed with the matter is to test the maintainability thereof. The Petitioners have sought to invoke Sections 61 (b), 62 (5) and 86 (1) (a), seventh proviso to Section 14, Sections 142, 146 and 149 of the Electricity Act 2003. Section 61 lays down the responsibility of the Commission to notify terms and conditions of tariff and while doing so the Commission is required to be guided by clause (b) of Section 61 viz that “(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;” The Commission has notified its tariff Regulations and while doing so has taken into account the factor mentioned in clause (b) of Section 61. As such this provision is not to be applied by the Commission in order to ascertain its compliance with that of a distribution franchisee agreement.

Section 62(5) reads as follows:-

*“(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.”*

These procedures have already been notified by the Commission in its tariff regulations. As such this provision is not to be applied by the Commission in order to ascertain its compliance with that of a distribution franchisee agreement.

Nextly, under Section 86(1) (a) the Commission is required to determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State, and where open access has been permitted to a category of consumers under section 42, the Commission to determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers. The Petitioner’s case is not that the Commission has not so determined the tariffs and charges. Hence, Section 86(1)(a) is not applicable to the present case.

The seventh proviso to Section 14 reads as follows:-

*“Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:”*

The Petitioners have no quarrel with the above provision. Neither have they been able to show as to how the distribution licensee has failed to be responsible for distribution of electricity in its area of supply.

The present petitions rather require an enquiry into the franchisee agreement entered into by MSEDCL. The Commission is not inclined to undertake such an enquiry. In fact, the 2003 Act does not even envisage such an enquiry. The Petitioners have sought reliefs under Sections 142, 146 and 149 of the 2003 Act. All these sections require the Petitioners to specifically point out as to how the terms of the franchisee agreement contravene any specific sections of the 2003 Act or rules or regulations made thereunder or order issued thereunder. The Petitioners have not shown any such thing.

Hence, due to all these reasons the present petitions deserve to be dismissed as not maintainable.

- a. It is also worthwhile to mention that on a reference by the Hon'ble High Court, the Commission had earlier issued an Order in Case No. 98 of 2007 on 07.05.2008. In the said Order the Commission had held that the Distribution Franchisee for the three divisions of Nagpur Urban Circle will be result in net benefit to MSEDCL after considering the all aspects. The said Order was not challenged by any party
- b. Further in Case No. 62 of 2009 the Commission held that the distribution franchisee should be selected and appointed through a competitive bidding process to ensure complete transparency and competition. In the present cases M/s Spanco Ltd. And M/s GTL Ltd. were appointed through competitive bidding process and the MSEDCL after complying the procedures appointed M/s Spanco Ltd. as a franchisee for Nagpur's three divisions and M/s GTL Ltd. for Aurangabad Division. In Case No. 62 of 2009 along with the directions for the procedure to be adopted for appointment of Franchisee, the Commission also issued guidelines/ principles for the Distribution licensees to be followed while appointing distribution franchisee. Also the Commission held as follows:

*“.....However, while doing so, MSEDCL, as a Distribution Licensee, should take care to protect its own interests and that of its direct consumers, as well as the interest of the consumers within the Distribution Franchisee area, who are also primarily its consumers.*

.....

*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.”*

- c. Further, during the hearing the MSEDCL accepted that being a distribution licensee the MSEDCL is bound and liable for the acts of the franchisee. The franchisee is the agent of the MSEDCL to distribute electricity and not a trader.
- d. In view of the above, the Commission is of the view that the present Petitions are not maintainable for the reasons aforesaid. Accordingly, both the Case No. 120 of 2011 and 121 of 2011 stand dismissed as not maintainable.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V. P. Raja)  
Chairman