

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 59 of 2021

Petition filed by M/s.Khade Mewara Infra Project & Mining seeking action under Section 142 and 146 read with Section 149 of the Electricity Act, 2003 for non-compliance of Commission's Orders dated 08 September 2006 & 16 February 2008 and violations of Regulations made by the Commission.

M/s. Khade Mewara Infra Project & Mining

..... Petitioner

Maharashtra State Electricity Distribution Co. Ltd.

..... Respondent

Coram

Sanjay Kumar, Chairperson

I.M. Bohari, Member

Mukesh Khullar, Member

Appearance:

For the Petitioner

: Shri. Tushar Sonavane (Adv)

For the Respondent

: Shri. Ashish Singh (Adv)

Smt. Samreen Fatima (Adv)

ORDER

Date: 6 August 2021

1. M/s. Khade Mewara Infra Project & Mining (KMIPM) has filed this Case being Case No. 59 of 2021 on 24 April 2021 against Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) under Section 142 and 146 read with Section 149 of the Electricity Act, 2003 (EA-2003) for violation the provisions of EA-2003, Rules & Regulation made thereunder and willful noncompliance of the Commission's Order dated 08 September 2006 and 16 February 2008.
2. **Main prayers of the Petitioner are as follows:**

2. *To invoke the proceeding u/s.142, 146 against the Respondents by Holding and declaring that Respondents has non –complied the order of MERC and contravened the MERC direction.*

3. *This petition may kindly be allowed and MSEDCL be directed to strict compliance of its responsibility of providing reliable and uninterrupted supply and to mitigate voltage variation problem in strict compliance of provision of MERC Regulations.*
4. *The MSEDCL shall be directed to refund the infrastructure cost recovered from Petitioner under guise of DDF.*
5. *To impose penalty against Respondent for loss caused to petitioner and to compensate the petitioner for loss.*

3. Petitioner in its Petition has stated as follows:

- 3.1. Petitioner is an industrial consumer of the MSEDCL, bearing Consumer No.155389015320. It has installed captive stone crusher plant at Gat No.313 & 314, Village-Hasnabad, District- Ahmednagar. KMIPM applied for industrial purpose electricity connection on 30 November 2019 by submitting A-1 Form along with load sheet for its stone crusher installation.
- 3.2. On 30 November 2019, the Superintending Engineer, Ahmednagar Circle, MSEDCL forwarded A-1 application to Executive Engineer, Sangamner Division for technical feasibility report. The Additional Executive Engineer, Sangamner –I Sub-Division submitted the technical feasibility report to Executive Engineer, Sangamner Division, on 06 December 2019, which was onward submitted to Superintending Engineer, Ahmednagar Circle on 09 December 2019.
- 3.3. It is evident from technical feasibility report and sanction order issued by Superintending Engineer, Ahmednagar, that supply to KMIPM has been proposed by tapping existing feeder named 11 KV Chincholi Gaothan feeder under pretext of Dedicated Distribution facility (DDF), which is totally contrary to the direction of the Commission in Order dated 16 February 2008 in Case No.56 of 2007.
- 3.4. The Superintending Engineer, Ahmednagar Circle sanctioned the technical estimate on 17 December 2019 under DDF with capital outlay of Rs. 8,28,120/- which includes the work of construction of 1.9. km 11 kV line and the cost of CT/PT. Further the Superintending Engineer, Ahmednagar Circle issued load sanction order and sanctioned the load of 675 kW with contract demand of 845 kVA.
- 3.5. KMIPM has incurred cost of Rs. 29,50,002/- on 11 kV line works which is more than technical estimate of MSEDCL. Further, on KMIPM deposited Rs. 14,67,496.00 towards the 1.3% supervision charges and security deposit etc.on 17 February 2020. Upon deposition of aforesaid amount, the Superintending Engineer, Ahmednagar Circle issued the Supply Release Order on 12 March 2020 and thereafter supply was released on 16 March 2020.

- 3.6. KMIPM under pretext of receiving uninterrupted supply, unwillingly carried out the work of extending the existing 11 kV feeder and incurred the expenses which were almost thrice the technical estimate. The MSEDCL in contravention of direction of the Commission in respect of approved schedule of charge, recovered the cost of CT/PT and associated metering from KMIPM.
- 3.7. The KMIPM alleges that MSEDCL forced it to bear the cost of infrastructure of extending line and has contravened the directions of the Commission issued vide Order dated 16 February, 2008 in Case No.56 of 2007 and also the Schedule of Charges approved by the Commission in its Order dated 08 September 2006 in Case No.70 of 2005.
- 3.8. In the said Orders the Commission has clarified that, the infrastructure development for supplying electricity to the prospective consumer up to the point of supply is the responsibility of Distribution Licensee i.e. MSEDCL and it cannot recover the charges other than the charges approved by the Commission in its schedule of charge.
- 3.9. The Commission in its Order has clarified the concept of DDF and held that, extension of existing line/feeder by tapping on existing feeder is not purely DDF. The DDF cannot be imposed on consumers. In contravention of these directives of the Commission, MSEDCL continued old practice and recovered charges of non-DDF supply under guise of DDF supply from the Petitioner.
- 3.10. KMIPM has been facing problem of low voltage, voltage imbalances & frequent tripping since the date of connection. KMIPM intimated MSEDCL on several occasion to meet statutory compliances specified in SoP Regulations, 2014 and Electricity Act, 2003 but the non-compliance and violations are still continuing till date. The activity of stone crushing is continuous process, which requires a continuous supply. Even a single tripping or voltage variation/imbalances may result into process break. In such situations the large stones get stuck in Jaw and conveyer belt. In order to restart the process stones are required to be removed manually and this process takes 30 to 45 minutes. As such at each tripping or of voltage variation/imbalances the same time of about 30 to 45 minutes will be consumed to restart the Unit.
- 3.11. In support of the occurrences of low voltage and tripping issues, KMIPM submitted tripping and voltage variation data from March, 2020.
- 3.12. Considering non-compliance of Regulations and the Commission directives, the Commission can initiate proceedings on Suo moto basis or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 146 of the Electricity Act, 2003.

3.13. As such total loss of production in hours in month of March 2021 is 179 hours, in February 2021 is 121 hours and in month of January 2021 is 123 hrs. The average production of KMIPM per hours would be 170 tons as such total per day production for 20 hours would be 3400 tons but due to tripping there is production loss. Following table depicts estimated loss:

Month	Production Rate	Production Capacity per Hour	Production Lost Hours	Estimated Loss (Rs.)
January-21	Rs.240 per Ton	170 tons	123	50,18,400/-
February-21			121	48,96,000/-
March-21			179	73,03,200/-

3.14. Further, KMIPM had installed the automatic power factor control device but due to voltage variation and frequent tripping, said device is unable to work and consequently the power factor comes below 0.95. Due to poor power factor, KMIPM has been subjected to automatic penalty in energy bill in months of December 2020.

3.15. KMIPM raised several complaints vide correspondences dated 22 January 2021 and dated 03 February 2021. Further, during the personal meeting held on 25 January 2021 with Chief Engineer, Nashik Zone and meeting dated 01 February 2021 with Joint Managing Director, Konkan Region, Kalyan, KMIPM requested to solve problem of frequent tripping and low voltage and in respect of illegal recovery of infrastructure cost under guise of DDF supply. Till today MSEDCL has not resolved the issues.

3.16. KMIPM is relying on letter of the Executive Engineer, Sangamner Division dated 22 January 2021 addressed to Superintending Engineer, Ahmednagar Circle admitting that there are frequent tripping and voltage variation on feeder supplying KMIPM.

4. MSEDCL in its reply dated 7 June 2021 submitted as below:

4.1. MSEDCL has filed its preliminary reply to the Petition on the issue of Maintainability of the Petition before the Commission and further objecting to the reliefs as claimed by the Petitioner vide the present Petition.

4.2. Though the Petition has been camouflaged under the provisions of non-compliance, in effect KMIPM is seeking redressal of its grievances qua its dispute for refund of "DDF Charges". Such refund whether maintainable or not can only be decided by a forum created especially for the said issue and instead of filing a Petition before the said forum, KMIPM has chosen to approach the Commission.

4.3. The alleged dispute raised by KMIPM is purely a dispute between a consumer and a Distribution Licensee which falls under the jurisdiction of the Consumer Grievance Redressal Forum created under Section 42 (5) of the EA- 2003. The EA-2003 under

section 86 (1) (f) only gives power to the Commission to adjudicate disputes between a licensee and a generating company and not between a licensee and a consumer.

- 4.4. MSEDCL has relied upon the Judgment of Hon'ble the Supreme Court passed in Civil Appeal No. 3551 of 2006 in the matter of *Maharashtra State Electricity Distribution Company Limited Versus Lloyds Steel Industries Limited* wherein Hon'ble the Supreme Court vide its Judgment dated 14 August 2007 has categorically held following:

“

Considering that a complete machinery has been provided in Sections 42 (5) and 42 (6) of the Electricity Act, 2003 for redressal of grievances of individual consumers, held, wherever a fourm/obmudsman has been created under the 2003 Act for redressal of grievances of consumers, the consumers can only resort to these bodies for redressal of their grievances. Hence, where the state concerned had created a proper forum for redressal of grievances of consumers, the State Electricity Regulatory Commission had no jurisdiction to adjudicate upon such matter. Even under section 86 (1) (f) of the Electricity Act, 2003 the said commission had no power to adjudicate upon disputes relating to grievances of consumers and it could only adjudicate upon the disputes between the licensees and generating companies.”

- 4.5. Hon'ble the Supreme court vide another Judgment dated 01 September 2009 passed in Civil Appeal No. 7687 of 2004 in the matter of *General Manager, Telecom Versus M. Krishnan And Another* has further held as under:

“

In our opinion where there is a special remedy provided in Section 7-B of the Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred”

- 4.6. Hon'ble the Supreme Court in *Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Ors.* [(2010) 5 SCC 23] categorically held that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act. It is clear that the EA- 2003 is a Special Act in itself created by the parliament which is a complete code in itself and the provisions contained therein cannot be overridden by any other Act i.e. the Courts, tribunals as well as authorities created under the Act are bounded by the time line prescribed in EA- 2003.

- 4.7. Thus, when the special statute specifically provides for a separate and distinct dispute resolution mechanism under Section 86 (1) (f) and Section 42 (5) and 42 (6) of the Electricity Act, 2003 then there cannot be any other remedy or overlapping of powers entrusted upon different forums for specific disputes.

- 4.8. For supporting its claim, MSEDCL referred to the Judgement of Hon'ble the Calcutta High Court in M/s. Polymac Thermaformers Pvt. Ltd. and Anr. Vs. the State of West Bengal and Ors. [(2013) 4 CALLT 486 (HC)].
- 4.9. Hence, in view of the above-mentioned provisions of law and precedents MSEDCL has requested to dismiss the present matter as there exists an 'Alternate Remedy'.

5. KMIPM in its Rejoinder dated 23 June 2021, stated that:

- 5.1. MSEDCL has misconceived the fact and wrongly stated that the Petitioner shall raise dispute with CGRF established under the Section 42 (5) of Electricity Act, 2003 as the dispute falls within jurisdiction of CGRF.
- 5.2. MSEDCL has conveniently overlooked that, the present Petition has been filed under Section 142 and 146 of Electricity Act, 2003.
- 5.3. As per provisions of Section 142 of EA 2003, the Commission may initiate proceeding for violation of any of the provision of Electricity Act, Rules and Regulations made thereunder or for violation of direction of the Commission. The present Petition has been filed under Section 142 and 146 for contravention of directives on this Commission issued in Case No.70 of 2005 and in Case 56 of 2007.
- 5.4. The present Petition has been filed for contravention of the provisions of earlier MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 & MERC (Standards of Performance for Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 and newly notified MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021.
- 5.5. That, the main prayer of Petitioner is to invoke the proceeding under Section 142 and 146 against MSEDCL and declaring that MSEDCL has not complied with the Order of the Commission and has contravened the Commission's directions.
- 5.6. Petitioner has supported its claim by referring to past Orders of the Commission, wherein directions were issued to MSEDCL in respect of recovery of infrastructure charges.
- 5.7. KMIPM has alleged non-compliance all over Maharashtra. Though the present Petitioner has been filed in individual capacity still the issue raised in Petition is of general nature applicable to all consumers of Maharashtra therefore general direction from Regulatory Commission is warranted. KMIPM has requested the Commission to take cognizance of issue raised in present Petition and may be pleased to ask the data of last 10 years from MSEDCL in respect of illegal recovery of infrastructure cost under guise of DDF.

- 5.8. The citation of Hon'ble the Supreme Court and High Courts referred in MSEDCL's reply are not at all applicable to present Petition.
6. MSEDCL vide email dated 28 June 2021 has placed on record an agreement entered into between KMIPM and MSEDCL. The agreement stipulates conditions of supply and also identifies CGRF as dispute resolving body.
7. At the E-hearing held on 29 June 2021, both parties reiterated their submissions made in Petition/Replies.

Commission's Analysis and Rulings

8. Present Petition has been filed by KMIPM praying to invoke the powers of the Commission under Section 142 and 146 against MSEDCL for wilful non-compliance on two counts as under:
 - a) Non-adherence to the directives of the Commission issued vide Order in Case No.70 of 2005 dated 08 September 2006 and in Case 56 of 2007 dated 16 February 2008. Therefore, KMIMP seeks refund of infrastructure cost from MSEDCL.
 - b) The issue of poor reliability of supply, which is not within norms specified in the Commission's Regulations governing SoP, Supply Code and Power Quality.
9. KMIPM has alleged that MSEDCL forced it to bear the cost of infrastructure for line extension work and has thus contravened the direction of the Commission issued vide Order in Case No.56 of 2007 dated 16 February 2008 and Schedule of Charges approved by the Commission in its Order in Case No.70 of 2005 dated 08 September 2006. As per the Commission's dispensation the infrastructure development for supplying electricity to the prospective consumer up to the point of supply is the responsibility of MSEDCL and it cannot recover the charges other than approved schedule of charges. Under pretext of DDF, MSEDCL has released supply to KMIPM by tapping existing feeder. Feeder feeding KMIPM's installation is having several interruptions and on account of interruptions KMIPM is incurring losses.
10. MSEDCL has contended that issues raised in the present Petition qualify as a dispute between a consumer and a licensee which falls under the jurisdiction of the CGRFs created under Section 42 (5) of the EA- 2003. Section 86 (1) (f) of the EA- 2003 empowers the Commission to adjudicate disputes between licensees or between a licensee and a generating company and not between a licensee and a consumer.
11. KMIPM in its Rejoinder emphasized that the present Petition has been filed under Section 142 and 146 of EA-2003. Further, as per provisions under Section 142 of EA-2003, the Commission may initiate proceeding for violation of any of the provision of Electricity Act, Rules and Regulation made thereunder or for violation of direction of the Commission.

12. Considering the contentions of both the parties, the Commission is of the view that the issue of maintainability of the Petition is required to be decided first, before going into merits of the Case. Hence, it is appropriate to consider the definition of grievance as specified in MERC (CGRF & E.O) Regulation 2020, which reads as follows:

“Grievance” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to Standards of Performance of Distribution Licensees as specified by the Commission and includes inter alia Grievances in respect of non-compliance of any Order of the Commission or any action to be taken in pursuance thereof, which are within the jurisdiction of the Forum or Electricity Ombudsman, as the case may be;”
[Emphasis added]

Plain reading of the above definition makes it clear that the issue raised in the Petition (*‘non-compliance of any Order of the Commission’*) qualifies in terms of definition of Grievance, for redressal before the CGRF.

13. The Commission further notes that CGRF have been created in compliance of the statutory mandate under Section 42 (5) of EA-2003. If Distribution Licensee does not provide service to the consumers as per Orders or Regulations of the Commission, then CGRF has the authority to take necessary action for compliance by the Distribution Licensee. If every such grievance is treated as non-compliance of Commission’s Order/Regulations and referred to the Commission then CGRF mechanism established by the Electricity Act, 2003 will become redundant. This would never have been the intent of the legislature. Hence, every grievance of consumer needs to be referred to CGRF mechanism only within the timeline stipulated therein. If the Commission starts entertaining individual consumer grievances which is within the sole jurisdiction of CGRF, then it would be against the intent of the EA-2003. The segregation of role of CGRF vis-à-vis the Commission has been made clear by APTEL and Hon’ble the Supreme Court through their Judgments. APTEL in its judgment dated 29 March 2006 in Appeal No. 30 of 2005 has ruled as follows:

*“24. Mr. M.G. Ramachandran further submitted that directions relate to innumerable number of consumers exceeding several lakhs of consumers and therefore, the MERC is justified in invoking the powers under Sections 129 and 130 of The Act. We are unable to sustain the said persuasive contention advanced. **Be it a single or innumerable, with respect to grievance or complaint regarding Billing or Billing dispute, it is the Competent Authority under the Act, which has to exercise the powers. There cannot be a special provision or direction merely because consumers are too many. It is not open to the Commission to usurp jurisdiction by pointing out that the disputes are innumerable. That apart, it is***

impossible for MERC to examine the case of millions of customers which grievances are to be addressed by the forums specially constituted.

.....

27. The consumers have a definite forum to remedy the Billing dispute under Section 42(5) and further representation thereof under Section 42(6). Further Section 42(8) also saved the rights of consumer to approach any other forum such as the forums constituted under the Consumer Protection Act, 1986 or other Courts as may be available. In the circumstances, while making it clear that it is for the consumers to workout the remedies as may be open to them in Law, we hasten to add that we not only declined to examine the merits of the case and counter case of both parties as the issues or controversies are left open to be agitated before competent forum.” [emphasis added]

Thus, APTEL has clearly held that just because large number of consumers has grievance against Distribution Licensee, Commission cannot usurp the powers of CGRF mechanism constituted under the provisions of the Electricity Act, 2003. Above judgment of the APTEL was challenged before Hon’ble the Supreme Court wherein Hon’ble Supreme Court has held that although the Commission has general powers to issue directions to the Distribution Licensees for proper implementation of its Regulations/Orders, there was no reason to interfere with APTEL Judgment directing consumers to approach CGRF mechanism. Relevant part of Hon’ble the Supreme Court’s Judgment in Civil Appeal No 2846 of 2006 dated 14 August 2007 is reproduced below:

“

18. Thus while we hold that the Commission has power to issue a general direction to licencees that they should abide by conditions of the licence issued by them and charge only as per the tariff fixed under the Act so that the public at large should not be harassed, we are of the opinion that so far as the blanket direction given by the Commission for refunding the entire amount without making a proper investigation whether the issue of supplementary/amended bills was really warranted in every case or not is unsustainable. Here the Commission has gone beyond its jurisdiction. After all the distribution/ generating companies have to incur expenses for generation/distribution of power, and we cannot at the same time give license to the consumers to commit theft of electricity or to be benefited by improper functioning of the meter to the disadvantage of the distribution/generating company.....

19. Although, the Appellate Authority has set aside the order passed by the Commission and issued a direction that the individual consumers may approach the appropriate orders under Sections 42(5) and (6) we are not interfering with that direction, but we direct that before that the licensees/distribution companies shall hear the parties as directed hereinabove and decide whether the supplementary/amended bills issued by them are proper or not” [emphasis added]

Thus, the APTEL and Hon'ble the Supreme Court have categorically held that the Commission has no jurisdiction to adjudicate the complaints of individual or a group of consumers when there is a special dispute resolution mechanism envisaged under Section 42 (5) to Section 42(7) of the Electricity Act, 2003.

14. In para 12 above, the Commission has already held that relief sought in the present Petition is covered under CGRF Mechanism. In the light of such finding as well as considering the settled position of law from a catena of Judgements of Hon'ble the Supreme Court and APTEL and the statutory provisions under the EA, 2003 the Commission holds that present Petition seeking redressal of grievance of individual consumer (KMIPM) is not maintainable before the Commission.

15. Hence, the following Order.

ORDER

The Case No.59 of 2021 is dismissed as not maintainable.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson

