

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 82 of 2011 & 101 of 2011

Dated: 10th February 2012

**CORAM: Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member**

In the matter of:

Mumbai International Airport Pvt. Ltd.Petitioner (s)

V/s

1. Reliance Infrastructure Ltd.
2. The Tata Power Company Ltd.Respondent (s)

Advocate/ Representative for the Petitioner (s): 1) Mr. Sitesh Mukherjee, (Adv.)

Advocate / Representative for the Respondent (s): 1) Ms.Anjali Chandurkar (Adv.)
2) None

Intervenor Shri N. Ponrathnam

Daily Order

Heard the Advocates for the Petitioner and the Respondent No.1 and the Intervenor, in person.

The following observations have arisen in these matters, which are needed to be recorded:

It was admitted by MIAL that they are having a 37% mark-up on the tariff fixed by MERC. This, according to them, is being levied as Service Charges for the electrical infrastructure at the Airport which they are entitled to under the provisions of Section 12(A) (4) read with Section 22 of the Airport Authority of India Act, 1994. When asked as to why the 37% mark-up is being made on electricity charges rather than showing it separately as Service Charges, it was stated that it was just a basis.

Clearly, billing consumers of electricity at the rates higher than what has been determined by the Commission for various categories of consumers violates the Electricity Act, 2003. As per the recent Case Laws on the subject, including that of APTEL, Bulk users of electricity are entitled to take supply at Single Point as a Bulk Consumer. However, sub-distribution of electricity is not permissible under the Electricity Act, 2003. The Bulk User is expected to become a Franchisee of the utility which supplies them electricity. Other alternative is for all individual consumers to take separate meters, which it was pointed out is impracticable for an organisation like the Airport.

MIAL justified the mark-up of 37% as already pointed out as Service Charge being levied. Whether this practice, which clearly violates the Electricity Act, 2003, can be allowed to continue needs to be resolved by looking at the relevant Rules, standing Orders, Notifications issued under the Airport Authority of India Act, 1994 relevant to the matter and the possibility of harmonious construction between these and the provisions of the EA 2003, Rules and Regulations made there under. The provisions of Sections 173, 174 and 175 of the EA, 2003 needs to be kept in mind while trying to resolve this issue.

The Petitioner has come before the Commission on the basis of a limited remand from APTEL under which the Commission, inter alia, has been directed to re-categorise the tariff for aeronautical and non-aeronautical activities. On being specifically asked by the Commission that in view of the 37% mark-up there is no assurance that the tariffs determined or re-determined by the Commission will be passed on to the consumers, MIAL stated that they have given an assurance on affidavit that the benefits of the lower tariff will be passed on to the consumers to save the Service Charges. Clearly, the incompatibility that flows from two different Legislations needs to be settled upfront before we can proceed further in this Case.

It was stated by MIAL that all their activities under which, providing electricity is one, are being carried out under the overall mandate which they have under the AAI Act, 1994.

The Petitioner has submitted a document, giving clarification to the queries raised by this Commission during the hearing held on 18th January, 2012. However, the same is not on affidavit. The Petitioner is directed to respond to the specific queries raised in the hearing dated January 18, 2012, on affidavit, with a copy served on the Respondents and the Intervener.

Both the parties are directed to give their written submissions within four weeks, i.e., latest by March 10, 2012.

Post the matter for hearing on Wednesday, 21st March, 2012 at 12.30 hrs.

sd/-
(Vijay L. Sonavane)
Member

sd/-
(V. P. Raja)
Chairman