

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in/www.merc.gov.in**

Case No. 94 of 2015 and M.A. No. 5, 6 &7 of 2015

Date: 1 December, 2015

**CORAM: Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member**

In the matter of

Petition filed by MSEDCL seeking Review under section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 85 (a) of the MERC (Conduct of Business) Regulations, 2004 in Order dated 26.06.2015 in Case No. 121 of 2014(Case No. 94 of 2015),

&

Intervention Application of Shri Ashish Chandarana in Review Petition of MSEDCL (M.A. No. 5 of 2015 in Case No. 94 of 2015),

&

Intervention Application of Shri Ajayprakash Kaluramji Agrawal (Ruhatiya Group of Industries) in Review Petition of MSEDCL (M.A. No. 6 of 2015 in Case No. 94 of 2015),

&

Intervention Application of Maharashtra Veej Grahak Sanghatnain Review Petition of MSEDCL (M.A. No. 7 of 2015 in Case No. 94 of 2015)

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) ...Petitioner

Advocate for Petitioner:

Ms. Deepa Chawan

Respondent:

Shri. Ashish S. Chandarana

Intervener Applicant No. 1:

Shri. Pratap Hogade

Intervener Applicant No. 2:

Shri. A. K. Agrawal

Consumer Representative:

Shri. Ashok Pendse, TBIA

Daily Order

Heard the Advocate of Petitioner, Interveners and Consumer Representative.

MSEDCL submitted that every Tariff Order is a separate and distinct Order, and needs to be read as per the conditions mentioned in that Order. Even though the Order dated 12 September, 2008 in Case No. 44 of 2008 is titled as Clarificatory Order, for the purpose of deciding the period in which the consumers had option to avail non-continuous supply, it has to be treated as procedural Order. Thus, the reliance on the procedural directions in the Order dated 12

September, 2008 to conclude that the same is in force even after passing of the subsequent Tariff Orders is an error in law. It is clarified that MSEDCL itself has implemented the Order dated 12 September, 2008 till the issuance of Tariff Order dated 26 June, 2015. However, MSEDCL has now relooked into the issue and found that the procedural direction dated 12 September, 2008 is not legally tenable as it is contravening Regulation 9.2 of SoP and Article 19 (1) (g) of the Constitution of India. Hence MSEDCL has taken conscious decision to change its previous stand taken in various forums. Without prejudice to its stand on legality of Order dated 12 September, 2008, MSEDCL submitted that the revenue loss of Rs 187 crore calculated by the Commission in its MYT Order dated 26 June, 2015 should be treated as opportunity loss instead of revenue loss.

Shri Ashish Chandarana submitted that MSEDCL in present Review Petition has failed to cite a mistake or error apparent on face of record in Order dated 26 June, 2015. Further, he gave details about discriminatory approach adopted by MSEDCL in permitting change of category. He requested detailed investigation of such irregularities. He submitted that the SoP Regulations have been notified in accordance with Section 57 of the Electricity Act, 2003 for specifying the standards of performance of Distribution Licensees. SoP Regulations can be invoked only for the purpose of lawful requests of the consumer. If the option of change of category is limited to one month from date of Tariff Order, SoP Regulations cannot be invoked after lapse of such one month period.

Shri Pratap Hogade submitted that Commission's Order dated 12 September, 2008 in Case No. 44 of 2008 and provisions of SoP Regulations needs to be read harmoniously. Order dated 12 September, 2008 gives retrospective effect whereas provisions of Regulation 9.2 give prospective effect to change of category. He supports the stand of MSEDCL and requested to allow the change of category from continuous to non-continuous in accordance with SoP Regulations after lapse of the period of one month stipulated by the Commission.

Shri. A. K. Agrawal stated that different stand has been taken by MSEDCL in different forums. He elaborated on the stand taken by MSEDCL in support of Order dated 12 September, 2008 before the Supreme Court. He added that MSEDCL is deliberately forcing small consumers in to legal tangles and requested the Commission to penalize MSEDCL for the same.

Shri Ashok Pendse mentioned that present Case is not a fit case for review as there is no error on face of record.

MSEDCL reiterated its stand and assured that it is in the process of communicating to the various Forums about its changed stand on the applicability of Order dated 12 September, 2008.

Case is reserved for Order.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member