

Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)

**Appeal No.109 of 2007**

Dated: 17th December, 2008

Present : **Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**  
**Hon'ble Mr. A.A. Khan, Technical Member**

Maharashtra State Electricity Distribution Co. Ltd.,  
Plot No. G-9, Prakashgad, Bandra(E),  
Prof. Anant Kanekar Marg, Mumbai-400 051. ... Appellant (s)

Versus

1. Maharashtra Electricity Regulatory Commission  
Through its Secretary,  
13<sup>th</sup> Floor, Center No. 1,  
World Trade Centre, Cuffe Parade,  
Colaba, Mumbai-400 005.

2. MIDC Industries Association, Chandrapur

3. Chamber of Marathwada Association,  
& Agriculture, P-2, Bajaj Bhavan,  
MIDC Railway Station, Aurangabad.

4. M/s. Ispat Industries Ltd.,  
Nirmal, 1<sup>st</sup> Floor, Nariman Point,  
Mumbai-400 021.

5. Mumbai Grahak Panchayat,  
Grahak Bhavan, Behind Cooper Hospital,  
JVPD Scheme, Vile Parle (W),  
Mumbai-400 056. ... Respondent (s)

Counsel for the Appellant (s) : Mr. Vikas Singh, Sr. Adv., with  
Mr. Ravi Prakash  
Counsel for the Respondent(s) : Mr. G. Umpathy for ISPAT Industries –  
Impleaded Resp.,  
Mr. Buddy A. Ranganadhan for Resp.1

**JUDGMENT****Per Hon'ble Mr. Justice M. Karpaga Vinayagam**

Maharashtra State Electricity Distribution Company (MSEDC) Ltd. is the appellant herein. Challenging the Impugned Order dated 18/5/07 passed by the State Commission of Maharashtra (MERC), R-I herein, this appeal has been filed by the appellant.

2. The short facts leading to filing of this Appeal are as follows:

3. The Maharashtra Government, with a view to reorganise and restructure the set up of the erstwhile Maharashtra State Electricity Board (MSEB), acquired all the properties inclusive of the rights and liabilities of the erstwhile MSEB through its notification dated 4/6/05. Pursuant to this notification, four different companies were constituted to discharge the various functions of the Act.

4. Out of the said four companies, the MSEDC, the discom is principally responsible for the distribution of electricity in the entire Maharashtra State. The said company under the statute, is to distribute electricity in the State of Maharashtra. The Appellant then took over responsibility of the distribution licensee for supplying the ever-increasing requirement of power to the State.

5. Since the appellant realised that the infrastructure inherited by it from the erstwhile MSEB is quite old, it carried out a study of the existing infrastructure, in order to efficiently fulfill its obligation of supplying and catering to the ever increasing power requirements of the State of Maharashtra. However, the financial condition of the Appellant was extremely delicate. The said financial condition was persisting despite the best efforts of the Appellant to reduce distribution losses and to improve metering and collection efficiencies. Due to its efforts, the metering efficiency has gone up to 60% from 58% and the distribution losses have been reduced by 3.5% compared to 2005-06.

6. In the meantime, the Respondent Commission introduced the multi year tariff regime with effect from 2005-06. However, the implementation of the said system was deferred by one year.

7. Ultimately, the Commission passed the tariff order on 20/10/06 which was to be effective till 31/03/07. As per the tariff regulations, the application for determination of tariff shall be made to the Commission within 120 days from the date the tariff is intended to be effective. Thus, the Appellant was required to submit an application on or before 30/11/06. The Appellant requested for extension of time up to 31/1/07. Thereafter, the Appellant filed a petition for approval of aggregate revenue requirements and determination of Multi Year Tariff (MYT) for the first control period.

8. On receipt of Appellant's petition, the State Commission directed the Appellant to issue a public notice to all the concerned. Accordingly, public notice was issued. After following the required procedure under law, the impugned order was passed by the Respondent Commission on 18/5/07. Aggrieved over this order, the present appeal has been filed by the Appellant mainly raising the four issues. They are as follows:

1. Employee Expenses
2. A&G Expenses
3. Distribution Losses; and
4. Assessment of consumption of agricultural consumers.

9. The appeal was admitted and notice ordered to the Commission.

10. When the matter came up for final disposal, Shri Vikas Singh, the Learned Senior Counsel for the Appellant persisted on the first two points, regarding Employee Expenses and A&G Expenses. He further submitted that he is not pressing the other two issues mentioned above.

11. While deliberating on these first, two points, the Learned Senior Counsel for the Appellant made the following submissions which are referred to below:

*(A) "The State Commission has disallowed Rs. 82 crores under the heading 'Employee Expenses' without projecting any basis for the said disallowance, which is in complete derogation of the law laid down by the Hon'ble Tribunal in earlier cases". The Appellant had furnished the particulars of expenditure for the purpose of employee*

*expenses under various sub-heads for which the gross total came to Rs. 19619.05 crores. But the Respondent instead of making a prudence check in respect of the proposed expenditure under different sub-heads for the purpose of deciding it on its merit, has simply disallowed the actual expenditure without taking into consideration the decisions rendered by the Hon'ble Tribunal. The expenditure on Employee Expenses is statutory in nature. It has to be allowed on the basis of capital expenditure and not on normative basis unless there is a specific finding that the expenditure incurred by the licensee is not proper. This is however, not so if the present case is considered. Accordingly, disallowance of Rs. 85 crores is improper”.*

*(B) “The disallowance of Rs. 21 crores under the heading of A&G Expenses for the year 2005-06 has been done in contravention of the law laid down by the Hon'ble Tribunal in earlier cases. The Respondent Commission, while making a deduction of Rs. 21 crores under this category has failed to carry prudence check in respect of the proposed expenditure under each sub-head, thereby failing to apply its mind in the present matter. The deductions have been ordered without examining the proposed expenditure, which is the sole basis for accepting or rejecting any expenditure under this category. Hence the impugned order is liable to be set aside”.*

12. With reference to the above two points, urged by the learned senior counsel for appellant, we have heard Shri Buddy Ranganathan, the Learned Counsel for the State Commission. While making the reply, the learned counsel for the Commission fairly conceded that in respect of the above two points, already judgments have been rendered by this Tribunal in Appeals No. 251/06 (Reliance Energy Ltd. Vs. Maharashtra Energy Regulatory Commission) and 90/07 (Reliance Energy Ltd. Vs. Maharashtra Energy Regulatory Commission) and as per those Judgments which have become final,

the Employee Expenses and A&G Expenses are to be allowed on the basis of the Actual Expenses incurred, subject to prudence check.

13. In other words, the Counsel for the Respondent Commission virtually conceded about this position of law settled by the Tribunal, which has not been challenged by the State Commission. This Tribunal then directed the Learned Counsel for the State Commission to file Written Notes giving the details of the above settled position of law. Accordingly, after getting the instructions from the Respondent Commission, a Written Note by way of a Memo has been filed by the learned counsel for Commission conceding the above position of law.

14. In view of the fair concession made by the counsel for the Commission, on the strength of earlier Judgments rendered by the Tribunal, it would be proper to refer to the relevant observations made by the Tribunal in those Judgments in Appeal No. 251/06 and Appeal No. 90/07.

15. Gist of the relevant observations made by the Hon'ble Tribunal with regard to the above issues in Appeal Nos. 251/06 on 4/4/07 are:

1. The Appellant furnished the proposed expenses of Rs. 187 crores, but the Commission allowed total Employee Expenses of only Rs. 136.70 crores, whereas the actual employee expenses

incurred by the Appellant during the relevant period was Rs. 207.34 crores as certified by the REL auditors. Thus, the Commission has not allowed the actual claim of Rs. 207.34, which has actually been incurred by the Appellant. As per the sixth schedule titled 'Financial Principles' and the Application of the Electricity Act, the expenditure incurred actually and properly by the licensee has to be allowed. Once the Actual Expenses on salaries and DA of the employees has been allowed, there appears to be no reason for not allowing the actual expenditure incurred on the very same employees. In view of the above reason and taking into consideration the provisions of the Sixth Schedule which is being used for the determination of ARR and truing up and the fact that the Commission is allowing the basic salaries and DA of the employees and that there are no prudence norms prescribed by the State Commission in this regard, the Appeal has to be allowed and the Commission has to allow the actual expenditure on employees for the year 2004-05 and 2005-06 after verification of the same.

2. The appellant incurred the administrative and general (A&G) expenses of Rs. 102.02 crores for the FY 2004-05 but the Commission permitted only a sum of Rs. 74.05 crores only after

truing up. It has to be conceded that under the Sixth Schedule Clause 78 of the Electricity Act, 1948, any expenditure properly incurred on distribution and sale of energy by the licensee is to be permitted. In the absence of any norms specified by the Commission, merely allowing 3.3% (being the CAGR) is not correct as it does not take into account the the effect of inflation and it has been virtually ignored. Therefore, the Tribunal is inclined to accept the contention of the Appellant in respect of A&G expenditure of the Appellant for the FYs 2004-05 and 2005-06”.

16. These ratios have been followed by the Tribunal in one another case in Appeal No. 90/07.

17. In the light of the above observations made by the Tribunal, we have to consider the main question as to whether the deductions made by the Respondent, the State Commission in respect of Employee Expenses and A&G expenses for the year 2005-06 is sustainable or not.

18. It is the specific contention of Shri Vikas Singh, the Senior Learned Counsel for the Appellant that the expenditure on Employee Expenses which is statutory in nature has to be allowed on the basis of the actual expenditure and not on normative basis and the disallowance of Rs. 82 crores is not sustainable in law.

19. Similarly, the Learned Senior Counsel for the Appellant also strenuously contends that the disallowance of Rs. 21 crores under the heading of A&G expenses for 2005-06 has been done without carrying out a prudence check. As fairly conceded by the Learned Counsel for the State Commission, this is the position of settled law which has been laid down by the Tribunal, which has attained finality. It has been further pointed out by the counsel for the Commission that the ratio has been adopted by the State Commission itself in a subsequent order dated 20/6/08. A copy of the said order of 20/6/08 also has been produced before this Tribunal.

20. On going through the aforesaid order, it is clear that the Commission has accepted the actual employee expenses under the truing up exercise and the final truing up of A&G expenses based on actual expenses for the entire year on prudence check. Admittedly, the Commission did not take into consideration the stated position of law. Consequently, it suffers from illegality.

21. In the light of the above settled position of law, we are of the view that the appeal has to be allowed on the above two grounds.

22. Accordingly, we set aside the impugned order passed by the State Commission in respect of Employee Expenses and A&G expenses for the

year 2005-06 with the direction to the Commission to approve the said expenses in totality as submitted by the Appellant, as the same being based on actuals.

23. This Appeal is allowed. No costs.

(A.A.Khan)  
Technical Member

(Justice M.Karpaga Vinayagam)  
Chairperson

Date: 17<sup>th</sup> December, 2008