

**Before the Appellate Tribunal for Electricity  
Appellate Jurisdiction**

**Appeal No. 28 of 2007**

**Dated: 10<sup>th</sup> October, 2007.**

**Present: Hon'ble Mr. A. A. Khan, Technical Member  
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

**IN THE MATTER OF:**

Marathwada Industries Association,  
Bajaj Bhavan, P-2, MIDC Area,  
Station Road, Aurangabad

...Appellant

Versus

1. Maharashtra Electricity Regulatory Commission,  
13<sup>th</sup> Floor, WTC No.1,  
Cuffe Parade, Coloba, Mumbai.
  2. Maharashtra State Electricity Distribution Co. Ltd.,  
Prakashgad, Bandra (East), Mumbai
- ....Respondents

Counsel for the Appellant : Mr. Balaji Yenge.  
Mr. S.C. Karandikar

Counsel for the Respondents : Ms. Deepa Chawan with  
Mr. Anami Bhattacharya,  
Mr. Kiran Gandhi &  
Mr. H.S. Jaggi for Resp. No. 2.

## JUDGMENT

### **Per Hon'ble Mr. A.A. Khan, Member Technical**

This appeal is preferred by Marathwada Industries Association (for brevity referred to as 'Association') registered under the Societies of Registration Act, challenging the order of Maharashtra Electricity Regulatory Commission (hereinafter referred to as 'MERC') passed on 21 Dec. 2006 in case number 40 of 2006. The issue lies in a very narrow compass and is founded in the tariff order for the year 2000-2001 passed by MERC by preliminary order on 28 April 2000 and final order on 05 May 2000 and the Appellant(s) did not challenge these orders at any point of time.

2. While implementing the aforesaid tariff order a tariff booklet containing schedules of tariff was brought out by Maharashtra State Electricity Board (hereinafter referred to as 'MSEB'), the predecessor of Maharashtra State Electricity Distribution Company Ltd. (hereinafter referred to as 'MSEDCL'), which allegedly carried out some changes in applicability of High Tension tariff particularly for HTP-I and HTP-II

categories of consumers. The allegation made by the Appellant(s) is that the tariff booklet issued by MSEB did not truly reflect the tariff order dated 05 May 2000, and entailed that High Tension industries located in Bombay Metropolitan Region (hereinafter referred to as 'BMR') and Pune Metropolitan Region (hereinafter referred to as 'PMR') were assigned HTP-I tariff and other HT-industries located out side the aforesaid regions instead of being fixed at HTP-II tariff, as per the tariff order, were also applied the HTP-I tariff. Appellant(s) alleges that the MSEDCL, while translating the tariff order into tariff booklet for implementation illegally modified the said tariff order by imposing HTP-I tariff also to consumers situated in Thane, Pune, Raigad, Nasik, Aurangabad, etc, which are outside BMR and PMR regions.

3. The Appellant(s) approached the MERC for its intervention and filed a Petition on 13 Sep. 2001. Not finding the redressal of its grievances the Appellant(s) filed a Writ Petition no. 1787 of 2004 before the Aurangabad Bench of Bombay High Court. The High Court on 30 Nov. 2006 allowed the Appellant(s) to withdraw the Petition and granted liberty to file an appeal

before this Tribunal.

4. The Tribunal by its order dated 01 Nov. 2006 directed the MERC to decide the Petition no. 39 of 2001 of the Appellant(s) pending before it within 12 weeks. The Appellant(s) states that the said Petition was considered by the MERC on 30 Nov. 2006, in case no. 40 of 2006 and was decided in an order passed on 21 Dec. 2006 which is challenged by the Appellant(s) in the instant appeal.

**Brief Facts of the Case**

5. The Respondent no. 1, MERC, was constituted under the Electricity Regulatory Commission Act, 1998 (hereinafter referred to as the 'ERC Act') and continues to function as such under the Electricity Act 2003 (hereinafter referred to as the 'Act') which was enforced with effect from 10 June 2003. It may be pointed out that the then MSEB had lost its rights to frame tariff on enactment of the ERC Act and with the constitution of MERC under this Act in August 1999.

6. As a result of the reorganization of the State power Sector in Maharashtra, MSEB was restructured into several companies including MSEDCL, which is the successor to MSEB and inherited the rights, liabilities and obligations of the MSEB.

7. MERC passed preliminary tariff order on 28 Apr. 2000 and final tariff order on May 5, 2000 which came into effect from 01 May 2000. In order to implement the said tariff order a tariff booklet containing schedules of tariff was notified by the MSEB on 01 May 2000. It is pertinent to note that the Appellant(s) has not challenged the tariff order of 01 May 2000 at any point of time.

8. For placing the issues in right perspective, we consider it appropriate to retrace the relevant facts about the applicability of tariff for the High Tension category industries since 1990 as indicated hereunder:

(a) On 30 Apr. 1990 a public notice was given by the MSEB for revision of Low Tension/High Tension tariff applicability to various

consumers with effect from May 1990. The High Tension tariff class consisted of HTP-1 and HTP-2. HTP-1 was further comprised of HTP-1(BP)('BP, signifies 'Bombay' and 'Pune') and HTP-1(O) ('O' signifies 'Others'). The relevant tariff of the Gazette Notification of Government of Maharashtra relating to the issue is extracted hereunder:

**“(1) HTP-1**

**(i) HTP-1 (BP)**

*This tariff is applicable for all HT industries and other HT consumers in Bombay Metropolitan Region and Pune Metropolitan Region as defined by the State Government. This tariff will also be applicable to other High Tension consumers an High Tension industrial consumer situated outside Bombay Metropolitan and Pune Metropolitan region but situated in Thane, Pune and Raigarh Districts, Nasik and its urban agglomerations including the industrial areas of Satpur and Ambad, Aurangabad and its urban agglomerations*

*including industrial areas of Chikalhana and Waluj whose contract demand is above 500 KVA or who even once record a maximum demand more than 500 KVA.*

.....

**2. HTP-2**

*This is an optional tariff available to consumers contracting for loads up to 250 KW connected load only as an alternative to the tariff HTP-1(BP) and HTP-1 (O) described above. The option once exercised can not be changed within the period of 12 billing months from the date of option and the consumers are required to give one calendar month notice prior to 1<sup>st</sup> October for change of option.”*

It is significant to note the content under heading **‘important aspects of the revision’** in the said gazette notification which reads as below:

*“1. The HTP-1 (BP) tariff so far applicable to the High*

*Tension and industrial consumer in Bombay, Pune Metropolitan areas and is now extended to the H-T and industrial consumers in Nasik and its urban agglomerations including industrial areas of Satpur and Ambad and in Aurangabad and its urban agglomerations including industrial areas of Chikalthama and Waluj, whose contract demand is above 500 KVA or who even once record maximum demand of more than 500 KVA. This will be effective from the billing month of May 1990.”*

The above indicates that from 01 May 1990, the HT-industries having Contract Demand of more than 500 KVA and located in the areas of Thane, Pune, Raigad, Nasik, etc. are clubbed with BMR and PMR in the category of HTP-1 (BP) Tariff and the HT-industries in these areas having CD up to 250 KVA are put in HTP-2 tariff category. The Appellant(s) did not challenge the order of being brought under the ambit of HTP-I (BP) tariff.



(b) MSEB notified tariff with effect from 01 Sep. 1998 after the approval of the Government of Maharashtra. The Tariff for HTP-I and HTP-II categories and their applicability are restricted as under :

***“HTP-I***

*Applicability This tariff is applicable for all H.T. industries and other HT Consumers in Mumbai Metropolitan Region and Pune Metropolitan Region as defined by the State Government.*

*This tariff is applicable for all other HT consumers and HT industrial consumers situated outside Mumbai Metropolitan and Pune Metropolitan Regions but situated in Thane, Pune and Raigad Districts, Nasik and its urban agglomerations including the industrial areas of Satpur and Ambad*

*industrial estates, Aurangabad and its urban agglomerations including the industrial estates of Chikalhana, Waluj and Chitegaon whose contract demand is above 500 KVA. The HT consumers in these areas who record maximum demand more than 500 KV will be made applicable this tariff for six months in succession from the month in which their M.D. exceeds 500 KVA.*

*If such consumers record M.D. more than 500 KVA on more than one occasion, the 6 month period will be counted from latest occasion of such violations.*

***“HTP-II***

*Applicability*

*This tariff will be applicable fro all H.T. Industries and other H.T.*

*consumers other than those covered  
under HTP-I.”*

9. Thus, the tariff effective from 01 Sep. 1998 continued to follow the applicability of the HTP-I(BP)/HTP-I tariff since the year 1990.

10. MSEB submitted a tariff proposal to Government of Maharashtra on 04 May 1999 for that to be made effective from 16 June 1999. The Government of Maharashtra, however, forwarded the tariff revision proposal to the MERC after it was established. MERC passed a tariff order on 05 May 2000

11. The above tariff order passed on 05 May 2000 indicates that HTP-I tariff beside covering BMR and PMR regions continues to be applicable to HT-industries having Contract Demand of more than 500 KVA and located in other areas of Thane, Pune, Raigad, Nasik etc.

12. Respondent no. 2, MSECDL has in its affidavit stated that the then

MSEB had affirmed and submitted data during the proceeding before the MERC which indicates that its proposal contained the consumers of HTP-I category which also included the Appellant(s) as per the pre-existing definition and applicability approved by the State Government for HTP-I.

13. The Respondent No. 2, MSEDCL further States that the projection of consumption by the HT-consumers reflected in HTP-I (BMR/PMR) category included the consumers in accordance with categorization which was prevalent since 1990 and, therefore, covered not only HT-industrial consumers of BMR and PMR regions but also other HT-consumers including Appellant(s) located in Thane, Pune and Raigad District, NASIK and its urban agglomerations etc. as approved by the State Government. The Respondent also states that the chart titled '**consumption estimate of HT-consumers**' contained consumption of all consumers in the aforesaid areas. We observe that the categorization of Appellant(s) in HTP-I (BP) tariff category in 1990; assigning HTP-I in 1998 and HTP-I(BMR/PMR) in 2000 indisputably show that the Appellant(s) for the purpose of tariff is part of Bombay Metropolitan and Pune Metropolitan regions

14. From the tariff order dated 05 May 2000, it is revealed that the MSEB in its tariff proposal relating to High Tension industrial consumers sought to introduce a new class of tariff for the consumers having connected load of more than 10 MW but MERC did not favour the proposal of creating a separate category for HT-consumers. Also regarding the change in tariff categories, the MERC in para 46 of the aforesaid order observed as under:

***“46. Revenue Projection***

*The Commission would like to state here that there is no change in the definition of categories unless explicitly mentioned in this tariff order.”*

15. Further, in the said tariff order, the Commission on the MSEB’s proposal to rationalize categories in HT-class of tariff has reiterated as under:

***“46.3.1.2.1 Rationalization of categories***

*The Commission .....*

*The Commission has decided that there is no need to create a separate category for bulk consumers HTP-BP as proposed by the MSEB.'*

16. In view of the above, it is quite clear that the Appellant(s) has, right from 1990, the year in which consumer categorization was revised till at least 2000-01 been considered to belong to Bombay Metropolitan Region and Pune Metropolitan Region, insofar as the tariff is concerned. As brought out earlier the Appellant(s) also has not challenged the tariff order dated 05 May 2000 but has only objected to its implementation by MSEB. Also the MERC has categorically ruled that unless specifically mentioned in the tariff order, no change in the definition of categories of the consumers is allowed and declined to create new category for bulk consumers falling in HTP-BP as was proposed by MSEB.

17. We observe that in the order of 05 May 2000 the category-wise demand charges and energy charges for HT consumers is represented as under:

*“1.2.31. Summary of HT Tariff for the year 2000-2001*

<i>Proposed category of consumers</i>	<i>Demand Charge (Rs./KVA/month) Rs.HP/month</i>	<i>Energy Charge Ps/W</i>
<i>HTP-I (industrial – BMR / PMR - Basis tariff</i>	300	335
<i>TOD Tariff 200 hrs.-0600 hrs.</i>	0	0
<i>HTP-II (Industrial-Others) -Basic Tariff</i>	280	325

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18. It is on the basis of the above table, the Appellant(s) have come to this conclusion that HTP-I tariff is exclusively covering only the HT-industrial consumers located in BMR and PMR regions and HTP-II tariff is applicable to other HT-industrial consumers, including the appellant(s) themselves.

19. We are of the opinion that the dimensions of the coverage of the various categories of consumers such as HTP-I, HTP-II, HTP-III, etc. alongwith the applicable conditions could only be ascertained by referring to

their respective authorized definitions and not on the basis of abbreviations like BMR/PMR to signify the category of HTP-I (BMR/PMR). In other words, in order to determine the extent of coverage and applicable conditions of HTP-I(BMR/PMR) category of consumers while keeping in view that neither change in definition of HTP-I category is specifically allowed nor any split-up of consumers of HTP-BP being permitted by the MERC, the definitions of HTP-I (BMR/PMR) either in the tariff order dated 5 May 2000 or in the tariff order / tariff schedule of the proceeding year (i.e. 01 Sep, 98) is to be referred to. This obviously will lead us to the definition in para 8(b) above which clearly stipulate that the Appellant(s) is part of BMR and PMR and not in HTP-II category.

20. It is seen that pursuant to the tariff order dated 01 Dec. 2003, the MERC has re-categorized HTP-I and HTP-II consumers such that the Appellant(s) Association fall under HTP-II category and have since been charged accordingly. Para 47 of the said order is reproduced below:

*“The Commission has reclassified the HTP-I category included*



*only those HT industrial and other HT consumers situated in the Mumbai Metropolitan Region (MMR) and Pune Metropolitan Region (PMR), as defined by the State Government. The balance HT industrial and other HT consumers would be classified under HTP-II category.”*

21. We do not appreciate the existence of error as claimed by the Appellant(s) that the above stated decision of MERC contradicts para 46 of the Order issued on 05 May 2000 (See para 14 above) which inter-alia state that unless specifically mentioned in the tariff order, no change in the definition of the consumers is allowed. Moreover, we feel that where two interpretations of an MERC's order are possible, the interpretation given by MERC which is a quasi-judicial authority should be considered more authentic unless it is in violation of the Act and law. The Appellant(s)'s claim of existence of error, therefore, is not sustainable.

22. In order to further test the aforesaid claim, we need to correlate the projected growth in the number of industries and consumption thereof of

HTP-I BMR/PMR consumers with respect to actual data of the preceding year considering the factors of CAGR etc.

23. The Respondent No. 2, MSEDCL, in its written submissions has stated that the erstwhile MSEB in its proposal filed in October 1999 mentioned the aggregate number of consumers in the HTP-I category as 2987 which is the same number as furnished by MSEB in March 2000. The Respondent has submitted a statement of the HT-industrial consumers in BMR/PMR as on April 2001 which indicates the aggregate number of consumers to be 3012, thus, recording net increase of 25 consumers, from the number furnished in October 1999. The number of consumers in HTP-I category remaining constant or increased marginally with respect to period prior to tariff order 05 May 2000 as compared with the data of 2001 indicate that the tariff order dated 05 May 2000 for the period 2000-2001 did not consider any change in the definition of HTP-I and HTP-II consumers as was existing in the past. Appellant(s) industries, therefore, continue to be a part of the HTP-I category. Further, the actual consumption of HTP-I category of consumers for the period April 1999 to Jan. 2000 (10 months)

was 5665 MU and when extrapolated gives full year consumption as 6798 MU. Applying the growth rate of 3% p.a. gives the projected consumption around the same figure as filed for 2000-01.

24. In view of the aforesaid the growth in number of consumers and growth in consumption of HTP-I categories of consumers indicate that the Appellant(s) industries are covered by the definition of HTP-I(BMR/PMR) category of tariff and were not excluded from it.

25. In view of the above, the appeal is dismissed with no order as to cost.

( A.A. Khan )  
Technical Member

(Mrs. Justice Manju Goel)  
Judicial Member

Dated : 10<sup>th</sup> October, 2007