

**Before the Appellate Tribunal for Electricity**

**(Appellate Jurisdiction)**

**Appeal Nos. 108 of 2007**

Dated : 21<sup>st</sup> July, 2009

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

**IN THE MATTER OF:**

M.I.D.C. Industries Association Chandrapur  
A-8, MIDC Chandrapur-442406

.... Appellant

Versus

1. Maharashtra Electricity Regulatory Commission  
13<sup>th</sup> floor, Centre No. 1, World Trade Centre  
Cuffe Parade, Colaba  
Mumbai

2. Maharashtra State Electricity Distribution Company Ltd.  
Prakashgad, S.T. Road, Bandra (East)  
Mumbai – 400051

... Respondents

Counsel for the Appellant(s) : Mr. Prakash Khajanchi, Ms. Jayshree Satpute

Counsel for the Respondent(s) : Mr. Vikas Singh, Senior Advocete with  
Mr. Ravi Prakash, Mr. J. Singh, Sr. Advocate,  
Mr. Varun Agarwal, Ms. Neelam Singh,  
Mr. Buddy A. Ranganadhan, Mr. Arjit Maitra  
Mr. G. Umapathy, Mr. Apoorva Misra,  
Mr. Rahul Sinha Mr. Vibhu Tiwari,  
Mr. Vikrant Ghumare Mr. Ashish Bernard,  
Mr. Amit Kapoor, Ms. Taruna S. Prasad.

**JUDGMENT**

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

The Maharashtra Electricity Regulatory Commission (MERC or the State Commission) passed the impugned Order for determination of Annual Revenue Requirement for FY 2007-08 to 2009-10 and for fixation of Tariff of Maharashtra State

Electricity Distribution Company Ltd. (MSEDCL) for the FY 2007-08 on 18.05.2007. Aggrieved by the said Order of the State Commission, the Appellant has preferred this appeal.

2. The Appellant is an association registered under the Societies Registration Act, 1860 as well as under the Bombay Public Trusts Act, 1950. There are 83 industrial consumers of Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL, Respondent no. 1) who are members of the Appellant association.

3. Brief facts leading up to the present appeal are as under:

- a) The State Commission notified the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 notified on 26th August 2005. Regulation 12.1 under Part C of these Regulations stipulates that the State Commission shall determine the tariff, inter-alia, for wheeling of electricity and for retail supply of electricity by the various licensees in the State of Maharashtra under a multi-year tariff framework with effect from 1st April, 2006. By a subsequent Order, the State Commission stipulated that it shall determine tariff for the period beginning April 1, 2007 instead of April 1, 2006.
- b) Accordingly, MSEDCL filed an application for approval of Annual Revenue Requirement (ARR) and Multi Year Tariff for the first Control Period from FY 2007-08 to FY 2009-10, on December 29, 2006, before the State Commission. After the application was admitted by the State Commission, the State Commission held public hearing on the subject at various places in the state during the period from March 5 to March 17, 2007. Representative of various consumer forums also participated actively in this process. The Commission based on study of all representations and issues raised during the public hearing and through written submissions, determined the ARR of MSEDCL for the three year period from FY 2007-08 to FY 2008-10, and the tariff for wheeling of electricity and retail sale of electricity for MSEDCL for FY 2007-08, and issued its operative order on April 27, 2007, with the revised tariffs coming into force prospectively, from May 1, 2007, and to remain in force till March 31, 2008. The

said operative order culminated into a detailed reasoned Order dated 18/05/2007 (the impugned order).

4. Challenging the impugned order the Appellant raising various issues has filed this Appeal.

**Issues Involved**

5. The main grievances of the Appellant revolve around the following:
- A. Regulatory Liability Charge
  - B. Prompt Payment Incentive and Bulk Discount
  - C. Distribution losses
  - D. Collection Efficiency
  - E. Additional supply charges (ASC)
  - F. Capital Expenditure

**Issue-Wise Contention Of The Appellant And The Respondents And Analysis Thereof**

6. We have considered through the submissions of the Appellant and the respondents we take up the issues as under:

**Issue A: Regulatory Liability Charge**

7. The State Commission in the impugned order (para 29, page 10) has directed *MSEDCL to refund Rs. 500 crore of Regulatory Liability Charges (RLC) to the specified consumer categories in FY 2007-08, out of the total amount of around Rs. 3225 crore collected by MSEDCL through RLC over the period from December 2003 to September 2006, which were like a loan given by these subsidizing categories to help MSEDCL tide over the financial crisis due to its heavy distribution losses.* Further, the State Commission expected *that with progressive improvement of MSEDCL's operations in future years, the balance amount will be refunded in the near short term.*

8. For better appreciation of the issue, there is a need to visit the earlier orders of the State Commission in this regard. The State Commission vide its earlier Order dated

10.03.2004, considering that MSEDCL was facing huge transmission and distribution (T&D) losses and that previous tariff orders did not yield favourable results, directed recovery of a separate component of tariff, known as 'Regulatory Liability Charges' (RLC) from the subsidizing categories of consumers (those consumers who were paying tariff higher than cost of supply to them) to be used by MSEDCL for funding losses which was to be returned to these consumers in future through tariffs. Collection of such RLC was considered like a loan given by these subsidizing categories to help MSEDCL tide over the financial crisis due to heavy distribution losses in the MSEDCL licensed area. MSEDCL is stated to have collected a sum of Rs. 3225 crore by way of levy of RLC from various consumers. The State Commission in the impugned order directed MSEDCL to refund Rs. 500 crore of RLC to the specified consumer categories in FY 2007-08, out of the total amount of around Rs. 3225 crore collected by MSEDCL through RLC. The Commission expected that with progressive improvement of MSEDCL's operations in future years, the balance amount will be refunded in the near short-term.

9. The Appellant has contended that impugned order has not laid down procedure and modalities regarding the refund of balance RLC to the consumers.

10. The Commission in its submissions has pointed out that the above ground does not survive as the Commission through its Clarificatory Order dated 24/08/2007 has given a detailed methodology of refund to the concerned consumer categories.

11. In the light of the above submission of the Commission, we take it that the above issue has been correctly settled.

**Issue B: Prompt Payment Incentive and Bulk Discount**

12. The State Commission vide its earlier tariff order of 10/03/2004 provided for incentive in the form of Bulk Discount to consumers like the Appellant, if the electricity consumption of a consumer exceeded certain minimum specified level in terms of units of electricity consumed. The incentive ranged from 1% to 5% of the monthly energy bill of the consumer. The State Commission vide the impugned order did not continue with the incentive in the form of Bulk Discount, which meant that the Bulk Discount which

was hitherto available to consumers was no longer available to them. In the impugned order, the State Commission provided for a Prompt Payment Discount which was available to all consumer categories if the bills are paid within a period of 7 working days from the date of issue of the bill.

13. The Appellant has contended that the impugned order does not provide for any bulk discount as was earlier available in terms of the Commission's earlier order dated 10.03.2004 and feels that Bulk Discount has been replaced by Prompt Payment Discount. The appellant has submitted that there is no basis for withdrawing Bulk Discount and replacing that with the Prompt Payment Discount since concept of both these discount are distinct and needs to be separately dealt with. Therefore, the Appellant has termed such withdrawal to be unfair and unjust.

14. Per contra, MSEDCL has submitted that the Commission's philosophy in this regard is contained in its different Tariff Orders as well as in Tariff Order (case 2 of 2003), which is to incentivise such consumers to remain with the MSEDCL.

15. The Commission in its submissions has stated that incentives and disincentives are a matter of tariff design and it is not the right of the consumer to expect or demand that a bulk discount or for that matter any discount should be given.

16. We are of the opinion that the consumer can not claim discount in any form as a matter of right. As per the scheme of determination of tariff, the Commission finalizes the aggregate revenue requirement to be recovered from the consumers after considering non-tariff incomes and government subsidy, if any. While finalizing the tariff, the Commission analyses various aspects of tariff philosophy and attempts to balance different stakes and claims. In the process, it is possible that bulk supply discount, which was given earlier, may not be required to be extended in future. We do not find any merit in the submissions made by the Appellant in this regard.

### **Issue C: Distribution losses**

17. The State Commission in the impugned order has stated (para 4.3, page 98) that

“MSEDCL submitted that the distribution loss for FY 2006-07 has been considered at the levels specified by the Commission in its Tariff Order for FY 2006-07, i.e., 32.97%. MSEDCL proposed an annual distribution loss reduction trajectory of 2% vis-à-vis the opening loss level in FY 2006-07, over the Control Period from FY 2007-08 to FY 2009-10. The summary of distribution loss trajectory proposed by MSEDCL in its MYT Petition is as follows:

<i>Particulars</i>	<i>FY 2006-07</i>	<i>FY 2007-08</i>	<i>FY 2008-09</i>	<i>FY 2009-10</i>
<i>Distribution Loss Trajectory</i>	32.97%	30.97%	28.97%	26.97%

18. MSEDCL had submitted before the State Commission the circle-wise loss reduction trajectory based on grouping of circles and proposed different loss level reduction target, ranging from 0.17% to 4.5% considering existing distribution loss levels in various circles. The State commission observed that the distribution loss indicated in the MYT Petition by MSEDCL was over-stated on account of the transmission losses being considered at the normative level of 4.85%, though the actual transmission losses are reported to be 6.07%, as given in the Table below:

**Energy Balance for FY 2006-07, as submitted by MSEDCL (MU)**

<b>Particulars</b>	<b>MYT Petition</b>	<b>Energy Audit (Apr 06 to Jan 07)</b>
Net power purchase from MSPGCL (A)	45033	38387
Power purchase from Other Sources (B)	30490	22725
Total Energy Input (C) = (A) + (B)	75523	61112
Energy sent from EHV network (D)	71860	57401
EHV System Loss (Transmission Loss) (E) = (C) – (D)	3663	3711
Transmission Loss (%) (F) = (E)/(C)	4.85%	6.07%
Total Energy Sold (G)	48168	40426
Distribution Loss (H) = (D) - (G)	23692	16975
<b>Distribution Loss (%) (I) = (H)/(D)</b>	<b>32.97%</b>	<b>29.57%</b>
Transmission & Distribution Loss (J) = (E) + (H)	27355	20687
Transmission & Distribution Loss (%) (K) = (J)/(C)	36.22%	33.85%

19. MSEDCL had estimated lower transmission losses and higher distribution losses, while the State Commission, as per the above table, found that transmission losses were higher and distribution losses were lower compared to those proposed by MSEDCL in its submissions before the State commission. Also, the actual quantum of power purchase till

January 2007 has been lower, and MSEDCL's total power purchase during FY 2006-07 was not likely to reach the levels projected by the Commission in the Tariff Order. After adjusting for the transmission loss level of 6.07%, the State Commission reassessed the distribution losses in FY 2006-07 at 31.6% compared to 32.97% assessed by MSEDCL in the petition before the Commission. This indicates a loss reduction of around 3.25% by MSEDCL in FY 2006-07, which according to the State Commission was *a reasonably good performance considering that this improvement has been shown without any increase in the un-metered agricultural consumption*. It is relevant to note here that the State Commission had earlier directed MSEDCL to reduce the distribution losses by 2% in FY 2006-07, in its Tariff Order, which came into effect from October 1, 2006.

20. The Appellant has submitted that ideally the transmission losses namely at high voltage level is about 4-5% and the distribution losses namely at lower voltages are about 12-14%. The T&D losses put together, called as technical losses, should be about 16-19%. However, the State Commission in its tariff order dated 20.10.2006 allowed losses higher by 10.85% (37.82%-26.97%) and directed MSEDCL to propose significant reduction in loss levels. MSEDCL proposed loss reduction of 2% per annum beginning from 32.97% in 2006-07 to 26.97% in 2009-10. Further, the T&D losses declared by MSEDCL at 31.6% for 2006-07 are not comparable to earlier years as losses in the predecessor organization (MSEB) included transmission losses, which were estimated to be 6.07%. Hence, the actual losses of MSEDCL are 37.67% (31.6%+6.07%) for 2006-07. The Appellant has submitted that loss reduction target and actual performance by MSEDCL are poor and not a significant level of loss reduction target and needs to be revised to at least reduction of 6% per annum during 2007-08 to 2009-10 to reach a level of 13.6% of distribution losses and 19.67% of T&D losses by 2009-10. The Appellant has submitted that T&D losses should cover only technical losses and not 'other losses'. The Appellant has further submitted that lower T&D losses would also result in lesser purchases of costly power, which in turn would result into a lower burden on paying consumers. The Appellant gave reference to various past orders of the Commission from the year 2000 onward, to drive home its point that MSEDCL has failed to achieve the T&D loss targets and metering targets set by the State Commission over the years.

21. MSEDCL has submitted that except for agriculture category of consumers, there are no un-metered consumer category in license area of MSEDCL and that nearly 100,000 agriculture consumers have been metered every year since 2000. MSEDCL also submitted about the difficulties faced by them in the process and about the steps taken by them towards metering of all consumers.

22. The State Commission in its submission has explained that the transmission and distribution losses cannot be added arithmetically to derive the T&D loss in the state and that commercial losses cannot be ignored while specifying the trajectory for distribution losses.

23. As regards the Distribution Loss Reduction Trajectory, we observe that the State Commission had directed MSEDCL to submit the break-up of the distribution loss into technical and commercial losses, for each circle, and MSEDCL as a whole. MSEDCL submitted the following break-up for 2006-07:

Distribution Loss	32.40%
Commercial Loss	17.14%
Technical Loss	15.27%

24. The Commission had recorded that

*“it is difficult to validate the above data submitted by MSEDCL in the absence of any technical studies to verify the overall distribution loss levels and the break-up of technical and commercial losses. However, this is the first time that MSEDCL has submitted such a break-up, and can be used as a starting point, which could be refined based on availability of better quality data. The above submission by MSEDCL clearly identifies commercial losses as one of the principal contributors of distribution losses. Commercial losses arise primarily on account of metering inefficiencies, billing inefficiencies, and theft of electricity. It is obvious that the capital investment required to reduce the commercial losses will not be significant. Rather, a more focused drive to reduce commercial losses, and strong penal action against connivance by MSEDCL’s employees, will go a long way to help reduce the commercial losses. The circle-wise data submitted by MSEDCL clearly identify certain circles with very high loss levels, which need to be addressed on a priority.”*

25. Reduction of distribution loss level is primarily an executive function. There is no one fool proof technique available to guarantee reduction of losses and desired results. Accelerated Power Development and Reform Programme (APDRP) sponsored by the Central Government is one such scheme introduced with huge investment to achieve reduction in distribution losses could be referred to for technique adopted for implementation. A quasi-judicial body like the Commission has pivotal role in ensuring that MSEDCL attains the desired target over a period of time. The measures prescribed by the Commission have to take into consideration various factors. The progress would mainly depend upon the will of and measures adopted by MSEDCL. The responsibility is cast upon MSEDCL to adopt the best practices suited to its functioning. In the above background, we do not find it necessary at this stage to issue any direction to the Commission in this regard or disturb the distribution loss level allowed by the Commission.

**Issue D: Collection Efficiency**

26. As per the impugned order, the collection efficiency of MSEDCL over the last three years was stated to be as under:

**Table: MSEDCL's Collection Efficiency**

	<b>FY 2004-05</b>	<b>FY 2005-06</b>	<b>Apr 2006 to Nov 2006</b>
Collection Efficiency (%)	88.33%	92.68%	91.19%

27. Before the State Commission, MSEDCL submitted that in FY 2005-06, the Collection Efficiency rose to 92.68%, due to 100% subsidy received from GoM towards free power given to agricultural consumers, which was subsequently withdrawn. MSEDCL projected a collection efficiency of 91% in FY 2006-07 and proposed to improve its collection efficiency by 1% during each year of the Control Period (2007-08 to 2009-10) reaching to 94% during 2009-10.

28. The State Commission in the impugned order observed that improvement in collection efficiency would result in better liquidity position of MSEDCL and that (at page 106 of the impugned order)

*“MSEDCL should attempt to achieve a collection efficiency of over 100%, which would signify that it is collecting its arrears also, along with the current bills. The Commission has not considered the collection efficiency while determining tariffs, since the Aggregate Technical and Commercial (AT&C) loss approach has not been followed. However, the Commission has considered provision for bad debts for FY 2007-08, FY 2008-09 and FY 2009-10, on a normative basis, at the rate of 1.5% of revenue billed, in line with the philosophy adopted by the Commission in the earlier Tariff Orders.”*

29. The appellant has submitted that the collection efficiency of MSEDCL is around 91%. As a result a sum of Rs. 7752 crore (equivalent to 200 days' receivables) is outstanding from consumers as on September 2005. High level of receivables is resulting into more interest burden on MSEDCL, which in turn is resulting into higher tariff for the consumers. The receivables are also resulting into higher income-tax liability and correspondingly an unnecessary burden on the consumers. The Appellant has also submitted that unrecoverable accumulated arrears should not be treated as an asset and should be written off as bad debts. Further, collection efficiency should be stipulated as variables for improvement under Regulation 16.1 of the State Commission (Terms and Conditions of Tariff) Regulations, 2005 and should be considered as a Controllable Factor as part of loss and gain shares mechanism of these Regulations.

30. The Commission in its submission has explained that tariff has been determined considering collection efficiency at 98.5% (with 1.5% as provisioning for bad debts) and accordingly no trajectory for collection efficiency has been given. Also, that the working capital requirement is zero due to large amount of consumer security deposit with MSEDCL.

31. Treatment of bad debts in the books of accounts of MSEDCL is an internal matter of policy for MSEDCL and cannot be guided by the viewpoint of the appellant. However, huge amount of receivables, stated to be more than 200 days' sales equivalent is definitely a matter of concern to the Appellant as it has an impact on the financing costs to MSEDCL. Lower level of receivables would definitely have a positive impact on the financial position of MSEDCL and with improved liquidity; it may be possible that need for borrowings goes down for MSEDCL.

32. As we have observed in the case of 'distribution loss' above, reduction in level of receivables is again dependent upon the will of and measures adopted by MSEDCL. In view of the submissions of the State Commission and the fact that the State Commission considered collection efficiency of 98.5% (page 106 of the impugned order) for the purpose of determination of tariff for retail supply of electricity in the state, we do not wish to give any direction in this regard to the Commission.

**Issue E: Additional supply charges (ASC)**

33. The State Commission in its earlier tariff order for MSEDCL in Case No. 54 of 2005 issued on September 29, 2006 (detailed Order issued on October 20, 2006) introduced the concept of Additional Supply Charges (ASC). The basic premise of ASC was that consumers benefiting from the reduced load shedding hours vis-à-vis the uniform load shedding hours should pay for the costly power procured to mitigate load shedding, through Additional Supply Charge in addition to the base retail tariffs. The ASC was specified as Rs. 5.15 per kWh in the Commission's Order in Case 54 of 2005.

34. In its submissions before the State Commission, MSEDCL had proposed an ASC rate of Rs. 5.15 per kWh in its MYT Petition, based on its estimates of sales and costly power purchase. After admission of MSEDCL's MYT Petition, the State Commission directed MSEDCL to revise the levy of ASC in accordance with the revised load shedding protocol approved by the State commission vide its order of 20/10/2007. MSEDCL in compliance with these directives submitted the revised ASC matrix for consideration of the State Commission. Considering the total cost of Rs. 2266 crore towards purchase of costly power

and the total anticipated sales of 4227 MU, the State Commission has determined the ASC rate as Rs. 5.36 per kWh, in the impugned order.

35. The Appellant has submitted that State Commission has continued with its approach of allocating costly power only to the categories of consumers that are getting benefit of reduced load-shedding, while the non-costly power has been distributed equally to all categories and regions. The expenditure on costly power is being recovered in the form of ASC from specified consumer categories. Distribution losses of ASC paying consumers accounting for 45% of the power sale is merely 2.25%. Charging of ASC on honest consumers who are contributing maximum to financial health and survival of MSEDCL is oppressive, arbitrary, unreasonable, unjustified and discriminatory. MSEDCL has time and again sought for its metering programme and has thrown to winds the directions of the State Commission. The State Commission vide Order dated 13.10.2006 rejected the petition of MSEDCL seeking extension of time frame under section 55(1) of the Electricity Act (the Act) and directed MSEDCL to complete metering of all consumers in terms of Tariff Policy (para 8.2.1) by the end of 31.03.2007. MSEDCL has failed to adhere to the schedule of 100% metering of its consumers. Lack of metering also contributes to inaccurate assessment of T&D losses. This coupled with abnormal sales growth is resulting in higher costly power purchases. Appellant has submitted that growth projections of 14% instead of 6% in respect of ASC paying consumers are abnormal. Further, the assessment of projected power demand and shortage of power has been based on data which is alleged to be not representative of the annual requirement. Hence, the ASC matrix based on the data of MSEDCL is misleading and incorrect. Also, whether applying ASC on consumers with low distribution loss levels and high collection efficiency level is contrary to section 61 of the Act and the Tariff Policy.

36. Per contra, MSEDCL has, quoting clause 8.2.1 and 8.2.2 of Tariff Policy, stated that in case a licensee does not meet the realistic target set by the State Commission in reducing loss, the appropriate action will be to initiate proceedings under section 142 of the Act, but not any other action not provided in the Act. MSEDCL also stated about the efforts it is making to reduce T&D losses and also quoted paras 28 to 32 of the State

Commission's order dated 20.10.2006 to drive home the point that there is no arbitrariness in the State Commission's approach in the application of ASC.

37. The State Commission in its submissions gave reference to Chapter 8 of its Order dated 20.10.2006 (case 54 of 2005) wherein the State Commission discussed the background of levying the ASC and the principles adopted for levy of such charges. Further, the Commission also explained that ASC has been withdrawn vide Order dated (72 of 2007) for FY 2008-09.

38. In the order dated 20.10.2006, the State Commission observed that MSEDCL had submitted that the increase in the demand - supply gap is the primary reason for the increase in load shedding, which has necessitated higher incidence of costly power purchase and that if the current load shedding protocol has to be maintained, then all the power available needs to be purchased (including the power available at rates Rs. 4 per and above per unit) as this increase in power purchase quantum enables MSEDCL to mitigate load shedding to some extent. The State Commission further observed that

*“Despite the differential load shedding hours, the consumers were paying similar tariffs. The Commission, through this Order, has decided to apply uniform load shedding hours, considering only less costly power purchase. However, selected consumer categories would continue to be benefited from the reduced load shedding hours, based on the availability of costly power and level of distribution losses and collection efficiency. The Commission is of the view that this benefit of reduction in load shedding hours is only possible by MSEDCL making purchases from costly sources to supply to such consumers. Therefore, the Commission has decided to determine the retail tariffs based on uniform load shedding hours and purchases from less costly power only as discussed in Chapter 6 and 7 of this Order.*

*In cases, where the consumers are receiving the benefit of reduced load shedding hours, the Commission is of the view that they have to pay for the costly power separately through the Additional Supply Charge.”*

39. From the above, we observe that the Commission has linked the levy of ASC with the reduction in number of hours of load shedding, which we feel indicates a reasonable nexus between the cost of such additional power and the class of consumers who would be benefited by purchase of such costly power. The benefit is available in the form of reduction in the load shedding hours when there is shortage of power. Therefore, we do not find that the ASC or IASC based on the criteria adopted by the Commission is arbitrary in nature.

#### **Issue F: Capital Expenditure**

40. MSEDCL, under its earlier Petition before the State Commission for FY 2006-07 (Case 54 of 2005), projected capital expenditure of Rs 2829 crore towards 12 capex schemes during FY 2006-07 and also proposed to initiate several infrastructure schemes amounting to Rs 14524 Crore. In its MYT Petition, MSEDCL revised the projected capital expenditure for FY 2006-07 to Rs 2769 Crore. Further, over the three-year Control Period from FY 2007-08 to FY 2009-10, MSEDCL projected capital expenditure of around Rs 17610.99 Crore. Of the projected capital outlay of Rs 17,611 Crore towards capex schemes over the Control Period, almost 78% of the outlay amounting to Rs 13,711 Crore pertains to Infrastructure Works Plan schemes for various circles/divisions.

41. After scrutiny, the State Commission considered outlay of Rs 451.63 Crore corresponding to the 7 schemes for which in-principle clearance had already been accorded and stated that during Annual Performance Review, the State Commission shall take into consideration the actual performance of MSEDCL as well as new schemes approved by then. The State Commission further, reiterated that (page 142):

*“in-principle approval of the scheme does not absolve the senior management of MSEDCL of their responsibility to priorities various schemes and undertake cost benefit analysis and financial analysis to validate the commercial prudence of each scheme. MSEDCL should ensure that the projected benefits actually accrue for the benefit of the stakeholders. It would be essential to monitor progress of each scheme as well as track expenditure and benefits accrued as per the scheme”.*

42. The appellant has submitted that the State commission is on the right track in approving capital expenditure schemes for infrastructure schemes but contends that the Debt Equity ratio adopted for funding of capital expenditure is 90:10 which is undesirable against ideal 70:30 and results into higher interest burden on MSEDCL. The Appellant also desires direction from this Tribunal to State Commission to look into the financial benefits and reasonable capital expenditure with full details of each scheme.

43. We are not convinced by the submission of the Appellant that higher Debt-Equity ratio results into higher interest burden and consequently higher cost of supply of MSEDCL. As per the scheme of determination of annual revenue requirement of the licensee and fixation of tariff, MSEDCL would be entitled for return on the capital infused in its operations, either in the form of interest if the capital is by way of borrowings or in the form of return on equity if the capital is by way of equity contribution. In the case of loan, the interest is allowed on actual basis subject to prudence check by the State Commission. The State Commission in its Order, at para 3.6 recorded that the actual effective interest rate of 7.53%. Further at para 5.9 the State Commission has stated that the Commission has considered the RoE @ 16% of the equity, in accordance with the Commission's Tariff Regulations. The equity is entitled to a higher return (16%) compared to interest on borrowings (7.53%) in the present circumstance and therefore, from the consumer's perspective a higher DE ratio turns out to be more beneficial.

44. Accordingly, the appeal is dismissed with no order as to costs.

45. Before parting with the judgment we would like to clarify that the above judgment should not be construed as positive endorsement of MSEDCL's performance. The reforms in the electricity sector were introduced in the backdrop of mounting losses, unsustainable financial position of state power utilities, increasing transmission and distribution losses, perceived or actual. The State Commission was constituted in terms of the Electricity Regulatory Commission Act, 1998. As per the preamble, the Act was enacted *'to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff,*

*transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith or incidental thereto*'. Subsequently, on the coming into force of the Electricity Act, 2003, the Act of 1998 was repealed. The Act of 2003 was enacted *'to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto*'.

46. The above statutes lay special emphasis on rationalization of tariff for electricity, transparent policies regarding subsidies and protection of consumers' interest. We feel that in the absence of sale of entire electricity only through properly functioning meters, the assessment of distribution losses in the system would remain an estimation exercise only. We all know that tariff structure of MSEDCL provides for cross subsidization of certain category of consumers by certain other categories of consumers. However, the level of cross subsidization would be known only when the distribution losses of MSEDCL are correctly determined. Till such time, achievement of one of the key objectives of the Act of 2003 of having transparent policies regarding subsidies would not be achieved. Though we recognize that the process requires some time to achieve the level of 100% meterisation. However, we need to be alive to the other important objective of the Act i.e. protection of consumers' interest. Non-implementation of meterisation programme in a time-bound manner means that the achievement of these objectives would remain a distant dream and would test the efficacy of the regulatory system. At the end of the day, if the consumer remains unsatisfied, there is a need for introspection as to why the consumer is not satisfied? The Apex Court has many a times in the past observed that justice should not only be done but should also be seen to have been done. May be, there is a need for the State Commission to analyze that despite the State Commission regulating so closely the progress of meterisation, why the consumers are feeling that MSEDCL has been allowed more time than required? Hence we deem it

fit to advise the State Commission to sharpen its focus for accelerated meterisation of consumers and reduction of Distribution losses in a time bound manner, with renewed drive and vigor with an in-built system of strong incentive to the licensee, MSEDCL.

**( A.A. Khan )**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

**Dated: 21<sup>st</sup> July, 2009.**

**Reportable/Non-reportable.**