

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

Appeal No. 96 of 2006

Dated: **September 28, 2006**

Vikram Cement
Unit of Grasim Industries Ltd.
P.O. Khor Distt. Neemuch

.... Appellant

Versus

M.P. Electricity Regulatory Commission
Urja Bhawan, Shivaji Nagar, Bhopal (M.P.)

Madhya Pradesh Paschim Kshetra
Vidut Vitaran Company, Indore (M.P.)

... Respondents

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member**

Counsel for the Appellant(s) : Mr. Vikrant Singh Bias

Counsel for the Respondent(s) : Mr. Sakesh Kumar for Resp. 1
Mr. Rohit Singh for Resp. 2

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

This appeal is directed against the order of the Madhya Pradesh Electricity Regulatory Commission (for short 'MPERC') dated March 31, 2006.

2. In this appeal, the appellant is challenging the levy of maintenance charges on feeder line extending to the factory of the appellant on the ground that the same is violative of the provisions of Madhya Pradesh Electricity Supply Code. It is not in dispute that feeder line was laid by the second respondent, Madhya Pradesh Paschim Kshetra Vidut Vitaran Company, Indore upto the factory of the appellant before coming into operation of the Madhya Pradesh Electricity Supply Code, 2004. It is also not in dispute that the appellant had paid the cost of the feeder line. By Order dated December 9, 2004 in Petition No. 4/2003, the MPERC fixed the charges for dedicated feeder for which the cost is exclusively to be borne by the consumer for its sole use, as per the following table:-

	Existing	Proposed	Approved
When a consumer requests for a dedicated feeder	Nil	Nil	Cost of extension to be borne by consumer + 15% supervision charges + maintenance charges to be paid to Board @ 1% per month of the actual cost of extension (excluding supervision charges)

3. The MPERC in its Tariff Order for the year 2006-07 neither considered nor referred to the aforesaid norm, as it appears that the feeder line for which cost was to be borne by the consumer, may not be for its exclusive use. In spite of this the MPERC imposed maintenance

charges for the line @ 1% per month of the actual cost of extension charges. In this regard the MPERC held as follows:

“ 3.52.- As per Electricity Supply Code, 2004, the feeders laid by the Discom irrespective of the fact the consumer has paid the cost, shall be the property of the Discom. The Discom shall maintain it at its cost and shall also have the right to use the same for supply to other consumers provided it shall not adversely affect the supply to the consumer who paid the cost of that feeder. The Commission agrees with the views of the Discom that for good quality and uninterrupted supply, the consumer has to bear some cost and it is decided to continue the above charges”.

4. It appears from the order of the Commission that while deciding the issue it had clause 4.9 of the Madhya Pradesh Electricity Code, 2004 in mind. This clause reads as follows:-

“ Clause 4.9 – The services connection/extension of distribution mains, notwithstanding that it has been paid for by the consumer, shall be the property of the licensee. The licensee shall maintain at its cost and shall also have the right to use the same service connection/extension for supply of energy to any other person but such extension or service connection should not adversely affect the supply to the consumer who paid for extension of the distribution supply not work”.

(Emphasis supplied)

5. According to clause 4.9, the licensee is required to maintain the service line at its cost. Para 3.52 of the order of the Commission shows that the MPERC was conscious of the ingredients of clause 4.9 in as much as it noted that the feeder laid by the Discom shall be the property of the Discom and the Discom shall also have the right to use the feeder line for supply to other consumers, notwithstanding the fact that the consumers had paid for the cost of the line. It also noted that Discom is to maintain the line at its own cost. In spite of the fact that the

Commission was conscious of the fact that Discom was required to maintain the line at its own cost, yet the Commission imposed maintenance charges at the rate of 1% per month of the actual cost of extension excluding supervision charges. It is clearly contrary to clause 4.9 of the Madhya Pradesh Electricity Supply Code, 2004. The learned counsel for the second respondent however, submitted that clause 5.3 of the Madhya Pradesh Electricity Supply Code was applicable and not clause 4.9. In order to appreciate the submission, it may be necessary to look at Clause 5.3 of the M.P. Electricity Supply Code, 2004. Clause 5.3 of the M.P. Electricity Supply code, to the extent relevant to the issue in question, provides as under:

“If found feasible, the consumer will be provided with a dedicated feeder and the consumer will be liable to pay additional charges as indicated in the Schedule of Miscellaneous Charges.”

6. The submission of the learned counsel for the second respondent is fallacious as no factual foundation was laid before the Commission for application of clause 5.3. Rather the Commission observed that the Discom has a right to use the same feeder line, which has been provided to the consumer bearing its cost, for use of other consumers as well. This is not the condition for the application of Clause 5.3, but for the application of Clause 4.9. In any case the consumer under clause 5.3 is liable to pay additional charges as per the schedule of miscellaneous charges. Both learned counsel for the appellant and the respondent were unable to find the schedule for miscellaneous charges in respect of which

reference is made in Clause 5.3 of the Madhya Pradesh Electricity Supply Code. The view of the Commission is contrary to the provisions of clause 4.9 of the Madhya Pradesh Electricity Supply Code and therefore, can not be sustained.

7. In the circumstances, therefore, the appeal is allowed and the order of the Commission to the extent it allows levy of maintenance charges to be paid to the Board at the rate of 1% per month of the actual cost of the extension is set aside, in respect of the consumers who have paid for the dedicated feeder/feeder line, but the licensee is using the same dedicated feeder/feeder line for supply of energy to other consumers as well. The appeal is disposed of accordingly.

**(Justice Anil Dev Singh)
Chairperson**

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

Dated: **the September 28, 2006**