

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur**

Case No. CGRF(NUZ)/044/2008

Applicant : M/s. Suryalaxmi Cotton Mills Limited,
40, Visawa Tilak Nagar,
West High Court Road,
Nagpur.

Non-applicant : MSEDCL represented by
Executive Engineer,(Adm.) and others
Rural Circle, MSEDCL,
Nagpur.

Quorum Present : 1) Shri S.D. Jahagirdar,
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

3) Shri S.J. Bhargawa
Executive Engineer &
Member Secretary,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 25.09.2008)

This grievance application is filed on 12.08.2008
under Regulation 6.4 of the Maharashtra Electricity
Regulatory Commission (Consumer Grievance Redressal

Forum & Electricity Ombudsman) Regulations, 2006 here-in-after referred-to-as the said Regulations.

The grievance of the applicant is in respect of erroneous charging of amount of Rs.67,09,582 in excess over and above the tariff decided by the Maharashtra Electricity Regulatory Commission (in short, the Commission) from September, 2006 upto March, 2008. His grievance is also in respect of charging of excess amount over and above the tariff decided by the Commission beyond March, 2008. He has prayed that relief on the following points may be granted to him by this Forum.

- 1) To direct MSEDCL to refund the excess amount of Rs. 67,09,582 charged in excess over and above the tariff decided by the Commission from September, 2006 upto March, 2008.
- 2) To direct MSEDCL to refund the excess amount charged over and above the tariff decided by the Commission beyond March, 2008 upto issuance of the order by this Forum.
- 3) To direct MSEDCL to refund aforementioned excess amounts along with interest as per Section 62 (6) of the Electricity Act, 2003.

Before approaching this Forum, the applicant registered his grievance on the same subject-matter with the Internal Grievance Redressal Cell (in short, the Cell) on 30.05.2008 with a request to direct MSEDCL to refund the excess charges along with interest. The Cell issued order on 21.08.2008 holding that MSEDCL has not violated any order or directives of the Commission and that it is not liable to

refund amount of Rs.67,09,582/- charged towards 2% voltage surcharge in addition to energy consumption charged as per metered readings.

The applicant is aggrieved by this decision of the Cell and hence, the present grievance application.

The matter was heard on 02.09.2008.

The applicant's case was presented before this Forum by his nominated representative one Shri R.B. Goenka while Shri G.N. Nagarale, Executive Engineer (Adm), Assistant Engineer Smt. Parihar and Legal Assistant Miss Bangde represented the non-applicant Company.

The applicant is a consumer of MSEDCL and he availed supply at 33 KV level. The present contract demand of the applicant is 6600 KVA. The applicant had a contract demand of 4000 KVA before 31.08.2006. He applied for enhancement in contract demand by 3000 KVA which was sanctioned by the CE (Commercial) MSEDCL vide his letter, being letter no. 29995 dated 31.08.2006. The total enhanced sanctioned contract demand is 7000 KVA at 33 KV.

A special condition was incorporated in the sanction letter which stated that as per the applicant's request, as a special case, the competent authority has accorded approval of additional load of 3000 KVA (totaling to 7000 KVA contract demand) on existing 33KV level (network) with the condition that he will be charged for additional 2% extra units on the energy units consumed by his plant in monthly energy consumed till the time the Commission determines surcharge on the power supply on lower voltage than the prescribed voltage as per Standards of Performance

(i.e. 2% additional units of energy consumption will be added for computing in the energy bill).

Accordingly, MSEDCL started charging 2% additional units in the energy bills of the applicant from the month of September, 2006.

It is the strong contention of the applicant's representative that the MSEDCL has charged an excess amount of Rs. 67,09,582/- over and above the tariff decided by the Commission from September 2006 upto March 2008. He has produced on record a statement showing monthwise excess units charged during this period. The applicant raised his grievance with the Cell on 30.05.2008 in this regard but the same was rejected.

The applicant's representative relied upon Section 45 of the Electricity Act, 2003 which specifies as under:

- “(1) Subject to the provisions of this Section, prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.
- (2) The charges for electricity supplied by the Distribution Licensee shall be (a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission (b) published in such manner so as to give adequate publicity for such charges and prices.
- (3) The charges for electricity supplied by the Distribution Licensee may include (a) fixed charge in addition to the charge for the actual electricity supplied (b) a rent or

- other charges in respect of any electric meter or electrical plant provided by the distribution licensee.
- (4) Subject to the provisions of Section 62, in fixing charges under this section, a Distribution Licensee shall not show undue preference to any person or class of persons or discriminate against any person or class of persons.
- (5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.”

Relying heavily on this provision, the applicant’s representative vehemently argued that the non-applicant has violated these legal provisions by charging additional 2% extra units on the energy units consumed by the applicant.

He added that the Commission has not at all authorized the non-applicant to charge such excess units consumption over and above the units recorded by the meter and also that it was not at all authorized to charge the tariff exceeding the tariff determined by the Commission under Section 62 of the Act. The excess amounts charged have, therefore, become refundable along with interest equivalent to Bank rate as per Section 62 (6) of the Electricity Act, 2003. Concept of charging 2% of excess units being charged to the applicant has not at all been approved by the Commission in any of its tariff orders which have been in force during the period of dispute. The month of September 2006 was covered in the Commission’s tariff order applicable from 01.12.2003 upto 30.09.2006. The second period from 01.10.2006 upto 30.04.2007 was covered by the Commission’s tariff order

effective from 01.10.2006. The third period i.e. from 01.05.2007 till 31.05.2008 is covered by the Commission's tariff order effective from 01.05.2007. The fourth period is covered by the Commission's recent tariff order applicable with effect from 01.06.2008. The applicant has produced on record copies of all these four tariff orders. According to him, none of these tariff orders specifies the condition of charging 2% excess energy units. This clearly implies that the MSEDCL has violated the orders and directions of the Commission and it is liable to be penalized under Section 142 of the Electricity Act, 2003.

He added that the C.E. (Commercial) in his letter dated 31.08.2006 specifically said that the applicant would be charged for additional 2% extra units on the energy units consumed by the applicant's plant in monthly energy consumption till the time the Commission determines surcharge on the power supply on lower voltage than the prescribed voltage as per Standards of Performance. The MSEDCL filed a petition for revision of tariff on 05.02.2007 and in this petition at page 185 thereof, it requested Commission to allow it to charge voltage surcharge as per MSEDCL's request letter dated 14.10.2005 for the consumers who shall avail supply at lower voltage level than the one stipulated in the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations 2005 hereinafter referred to as SOP Regulations. This request of MSEDCL which was pending with the Commission from 14.10.2005 and was a part of request in tariff petition for FY 2007-08, 2008-09 and 2009-10

was not considered by the Commission. The Commission issued tariff orders against this petition without considering the voltage surcharge. Since the Commission did not allow to implement voltage surcharge, MSEDCL's action of charging of 2% excess energy units on the consumed units is not only improper and unjust but it is also ab-initio illegal. The C.E. (Commercial) stipulated the condition of charging additional 2% extra units towards voltage surcharge and asked the applicant to submit undertaking with the hope that the Commission would allow voltage surcharge. However, the Commission has not allowed at any point of time the MSEDCL's request for levying voltage surcharge and as such, an excess amount came to be illegally recovered by MSEDCL. The applicant has given the undertaking and accepted the condition of charging for 2% energy units over and above the units consumed since he was badly in need of enhanced power supply and since he did not know the provisions of tariff. He strongly pleaded that asking the applicant to submit such an undertaking was in itself illegal.

He has relied upon the Commission's order dated 06.05.2008 passed in case no. 93/2007 in the petition filed by M/s. Yash Agro Energy Ltd. in which the Commission said that doctrine of promissory estoppel can not be invoked if it is found to be inequitable or unjust in its enforcement. The relevant text of the Commission's order in para 19 on pages 13 and 14 is as under:.

"19. (1) As regards Issue No. 1, it is vehemently argued by MSEDCL that the EPA between the Petitioners and MSEDCL have been executed after commercial negotiations and

deliberations, and, therefore, cannot be interfered with by the Commission. The Commission is of the view that it is a settled position that it is quite fundamental that the doctrine of promissory estoppel cannot be used to compel the Commission to carry out the representation or promise, which is contrary to law or which is outside their authority or power. The doctrine cannot also be invoked if it is found to be inequitable or unjust in its enforcement. Reference may be had to the judgment in the case of *Delhi Cloth and General Mills vs. Union of India*, AIR 1987 SC 2414, wherein it is held as under:

‘ ‘ 25. It is, however, quite fundamental that the doctrine of promissory estoppel cannot be used to compel the public bodies or the Government to carry out the representation or promise which is contrary to law or which is outside their authority or power. Secondly, the estoppel stems from equitable doctrine. It, therefore, requires that he who seeks equity must do equity. The doctrine, therefore, cannot also be invoked if it is found to be inequitable or unjust in its enforcement.

The principle of promissory estoppel would have no application when the statute, viz., the EA 2003 Act has specifically empowered the Commission to adjudicate on disputes between generating companies and licensees in terms of Section 86(1)(f) thereof. Any contract between parties is susceptible for review by the indulgence of the Regulatory Authority in performance of its statutory obligations.”

He also added that the applicant has quoted before the Cell the load sanction orders issued by MSEDCL to M/s. Saggu Castings Ltd., Kamptee Road, Nagpur and M/s. Sanvijay Rolling & Engineering Ltd., MIDC, Nagpur in which

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additional surcharge was not charged even though MSEDCL issued load sanction to M/s. Saggi Castings Ltd. at 33 KV with a contract demand of 8000 KVA while SOP Regulations specify limit of 5000 KVA. Similarly, the MSEDCL issued load sanction to M/s. Sanvijay Rolling & Engineering Ltd. with a contract demand of 2200 KVA at 11 KV though SOP Regulations specify limit of 1500 KVA CD at 11 KV. The applicant also pleaded before the Cell that the distribution licensee can not show undue preference to any class of consumers or discriminate in consumers as per provisions of section 45 (4) of the Electricity Act, 2003. However, the Cell overlooked the facts and grounds submitted by the applicant and wrongly concluded that the MSEDCL has not violated any order or directives of the Commission.

The applicant's representative during the course of hearing has filed a rejoinder dated 02.09.2008 raising as many as eleven questions along with answers therefor. The question-answers are based on the provisions of Law and the Commission's orders. In short, the applicant has stated in this rejoinder that as per Section 45 of the Act, the licensee can recover the amount as per tariff determined by the Commission. The licensee also cannot show undue preference to any consumer and may not discriminate between consumers vide Section 45 (4) of the Act. The licensee cannot also charge excess units other than those recorded by meter Vide Regulation 3.4.1 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations 2005 hereinafter referred to as the Supply Code Regulations. The provision contained in Section 62 (6) of the Act lays down that if any

licensee recovers a price more than tariff determined by the Commission, the excess amount shall be recoverable by the person who has paid the charges alongwith interest equivalent to the Bank rate. The Commission's tariff orders applicable from 01.12.2003, 01.10.2006, 01.05.2007 and 01.06.2008 nowhere permit recovery of excess charges for additional 2% units. Undertaking obtained by MSEDCL is not as per law and cannot be legally enforced vide Commission's order passed in case no. 93/2007.

He lastly stated that MSEDCL has violated the provisions of the Act and Commission's Regulations and tariff orders. He prayed that the amount of Rs.67,09,582/- charged to the applicant in excess over and above the tariff decided by the Commission from September, 2006 upto March 2008 should be refunded to the applicant along with interest. He also prayed that the MSEDCL be directed to refund the excess amount charged even after March 2008 upto the date of issuance of order by this Forum.

The non-applicant, on his part, has submitted his parawise report dated 28.08.2008 which is on record. A copy of this report was given to the applicant's representative and he was given opportunity to offer his say on this parawise report also.

The non-applicant has submitted that the applicant is an existing High Tension consumer already availing power supply on 33 KV level with a contract demand of 6600 KVA. Initially, the consumer approached the Chief Engineer (Commercial) of erstwhile MSEB (now MSEDCL) vide his letter dated 06.07.2005 for sanctioning of additional

contract demand of 3000 KVA in addition to existing CD of 4000 KVA totalling to 7000 KVA. He made a request for sanction of additional power on the existing voltage level at 33KV as he was not in a position to incur the huge amount required to upgrade the line to 132 KV level for a small fraction of power demand above 5000 KVA. As per SOP Regulations, the load over and above 5000 KVA is to be sanctioned on EHV level i.e. 132 KV only. Since the total contract demand was exceeding 5000 KVA, the C.E. Commercial vide his letter dated 23.02.2006 did not approve the proposal. The applicant again approached the Chief Engineer, (Commercial) Mumbai on 02.03.2006 and requested for sanction of additional supply of 3000 KVA contract demand in addition to existing contract demand of 4000 KVA on 33 KV level. The Chief Engineer vide his letter dated 31.08.2006 sanctioned the additional power supply to the extent of 3000 KVA totalling to 7000 KVA at 33 KV level with conditions that

- 1) the applicant will be charged for additional 2% extra energy units on the energy units consumed by his plant in monthly energy consumed till the time the Commission determines surcharge for the power supply on lower voltage level than the prescribed voltage as per SOP Regulations.
- 2) the applicant shall abide by to pay additional surcharge, whatever will be determined by the Commission for the power supply on lower voltage level than the one prescribed as per SOP Regulations.
- 3) since the additional 3000 KVA contract demand with existing 4000 KVA contract demand was sanctioned

on 33 KV level as per consumer's request, the quality of power supply on 33 KV level may not be reliable as EHV supply and may cause voltage dip/interruptions for which the MSEB (now MSEDCL) will neither be responsible nor will it pay any compensation for the same.

He added that the C.E. (Commercial) also asked the consumer to give an undertaking on a stamp paper for acceptance of aforesaid conditions before release of additional load. The applicant accordingly submitted the undertaking on a stamp paper of Rs.100/- on 15.09.2006. In view of acceptance of the aforesaid conditions by the applicant, MSEDCL started charging 2% additional units in the energy bills of the applicant from the month of September, 2006. He has admitted in his parawise report that till this date charging of 2% additional units of energy consumed has not been approved by the Commission in any of its tariff orders. However, he stated that the Commission has also nowhere indicated that levy of such a voltage surcharge shall be violation of any of the provisions of its tariff orders.

He denied the applicant's contention that the Commission did not allow to recover voltage surcharge in addition to tariff prescribed by the Commission. According to him, levy of surcharge is quite in order and the MSEDCL is not liable to refund any amount to the applicant. It is further argued that MSEDCL continued to charge 2% extra units as voltage surcharge till date due to the Commission's silence in the matter.

Giving reasons for charging of voltage surcharge, the non-applicant stated that MSEDCL's proposal of levy of voltage surcharge was pending with the Commission for consideration at the time when additional contract demand of 3000 KVA was sanctioned to the applicant. In that, MSEDCL proposed sanctioning of voltage surcharge in its revision petition dated 05.02.2007 of tariff in response to the Commission's directive vide its letter dated 01.01.2006. The Commission has neither commented on this issue nor rejected the MSEDCL's proposal in toto. Hence, it can not be said that there is a violation of the Commission's tariff orders.

He continued to submit that the applicant has given his free consent to implement the condition put forth by the MSEDCL. The applicant could have raised his objection to the imposition of the condition of payment of voltage surcharge before getting enhanced power supply. However, not only the applicant did not raise any objection that time but he also continued to make payment of all the energy bills ungrudgingly from September, 2006 to March 2008. The applicant also could have expanded his infrastructure in order to suit requirement of the MSEDCL for making the supply available on 132 KV. In that case, he could have got rid of the condition of additional surcharge. Thus, there was no genuine effort on part of the applicant for fair dealing with MSEDCL in this case.

He strongly submitted that MSEDCL has not played any fraud or misrepresentation to acquire the applicant's consent and it is the applicant who gave his free and willful consent and accepted the condition of voltage

surcharge. The applicant wanted to acquire the additional load by hook or crook which he obtained by giving his free consent and now it is alleged before the Forum that MSEDCL's demand is inequitable and unjust. This, according to him, is not proper and legal.

He vehemently supported the Cell's decision which rejected the applicant's grievance.

On the point of discrimination, the non-applicant denied that any partial treatment was given while giving sanction to M/s. Saggi Castings Ltd. and to M/s. Sanvijay Rolling and Engineering Ltd, MIDC Nagpur. M/s. Saggi Castings Ltd was given sanction vide H.O. letter dated 21.03.2005 and M/s. Sanvijay Rolling and Engineering Ltd., was given sanction by the S.E. NUC letter dated 12.04.2005 much prior to the sanction given to the applicant. That time, there was no proposal from MSEDCL's side to levy voltage surcharge. As against this position, the MSEDCL's proposal of levy of voltage surcharge was pending with the Commission for consideration when the applicant applied for sanction of additional load vide his letter dated 02.03.2006 and while the MSEDCL sanctioned the additional load on lower voltage on 31.08.2006. According to him, the facts and circumstances of the aforementioned two consumers are not comparable to those of the applicant's case.

The non-applicant's representative during the course of hearing also pointed out that since higher demand was sanctioned on 33 KV level than the prescribed one of 5000 KVA as per SOP Regulations, the MSEDCL is incurring line losses and this is the reason why levy of voltage surcharge of

stands justified. He also stated that the 33 KV line on which the present applicant is connected is a mixed feeder and it is not a dedicated distribution facility sanctioned only for the applicant.

While offering comments on the applicant's rejoinder dated 02.09.2008 in which some questions were raised, the non-applicant submitted that there is no violation of Section 45 of the Electricity Act, 2003 or other provisions of the Act and of provisions of Supply Code Regulations or of any tariff orders issued by the Commission.

He lastly prayed that the applicant's grievance application may be rejected.

In reply, the applicant's representative submitted that the contentions raised by the non-applicant do not have any support of the provisions of the Act or Commission's Regulations or of the four tariff orders so far issued by the Commission.

He also submitted that though the MSEDCL's proposal for levy of voltage surcharge was pending with the Commission at the time of sanction of additional contract demand to the applicant, the Commission has not at all subsequently approved levy of any such voltage surcharge in the tariff orders issued from time to time. He dismissed the non-applicant's contention that the voltage surcharge is justified because of the silence of the Commission by saying that there is no explicit or specific mention made in any of the Commission's tariff orders to the effect that such a voltage surcharge is permissible. On the contrary, the Commission has rejected the MSEDCL's proposal for voltage surcharge and

hence, charging of voltage surcharge amounts to violation of Commission's tariff orders and also of Section 45 and Section 62 of the Electricity Act, 2003. He reiterated that the Commission in its order passed on May 2008 in case no.93/2007 in the matter of petition filed by M/s. Yash Agro Energy Ltd for granting permission of third party sale of energy said that it is quite fundamental that the doctrine of promissory estoppel cannot be invoked if it is found to be inequitable or unjust in its enforcement.

He further submitted that the non-applicant's contention regarding line losses in the event of sanctioning higher demand on 33 KV level than the one prescribed under SOP Regulations is without any basis and logic. He explained that the non-applicant has not given any data in respect of these line losses. Secondly, the line losses if any are the T&D losses for which no consumer can be held responsible. Such line losses also are not recoverable from the consumers since MSEDCL has already made provision in this respect in their annual revenue requirements while proposing the tariff to be charged to consumers.

The main issue involved in this case is whether or not, the voltage surcharge of 2% levied on the applicant is legally sustainable in the circumstances of the case. It is also to be seen whether the Commission has indeed permitted levy of such a voltage surcharge in its tariff orders.

The Member-Secretary of this Forum has expressed his opinion in this case as under:-

“The applicant has stated that:

- 1) **The Distribution Licensee has shown undue preference or indiscriminated in the various class of consumer while sanctioning additional contract demand beyond SOP limit in low voltage level.**

The applicant in his submission stated that M/s. Saggi Casting Pvt. Ltd has been sanctioned additional demand on 21.03.2005 of 4800 KVA and its total contract demand is 8500 KVA on 33 KV level. It is more than 5 MVA as per clause 5.3 of SOP Regulations, 2005 which came in force on 20.01.2005. No surcharge is levied by non-applicant's. Similarly M/s. Sunvijay Rolling Ltd has obtained approval for additional 700 KVA. Thus total contract demand 2200 KVA which is more than 1.5 MVA as per SOP.

At the time of sanctioning above cases, no proposal was submitted to MERC by non-applicants. However, on 14.10.2005 non-applicant's approached MERC with a proposal that 15% voltage surcharge should be levied while sanctioning additional contract demand on lower voltage level (total contract demand existing limit as per SOP 2005 in 11 KV, 33 KV etc.) The said applicant approached on 06.07.2005 and rightly refused by CE (Comm.) vide letter No. 4848 dated 23.02.2006 for want of approval from MERC and advised consumer to opt for 132 KV the required voltage level. Consumer again approached on 02.03.2006 and requested that he is not in a position to incur huge expenditure for 132 KV take in infrastructure and load was sanctioned after due consideration vide letter No. 29995 dated 31.08.2006 at 33 KV level. The total

Contract demand (existing 4000 KV + additional 3000 KV will be 7000 KVA on 33 KV level. The condition was incorporated that 2% extra units will be charged over and above units consumed by applicant till Hon'ble Commission decides surcharge for power supply on lower voltage level which will be binding on consumer. The supply of 33 KV may not be reliable as EHV supply. Further non-applicant's has informed the MERC that voltage surcharge will be applicable after due approval to existing consumers also irrespective of date of sanction.

As such there is no discrimination while sanctioning contract demand to the applicant.

- 2) The non-applicant cannot charge any thing extra than tariff in force as per Section 45 of the Electricity Act, 2003 and prayed for refund of Rs.67,09,582/- amount charged towards 2% surcharge in addition to recorded energy in consumer meter for the period of September 2006 to March 2008 and to direct the non-applicant for further bills thereof.**

The non-applicant approached Hon'ble Commission vide his letter no. P.Com/33281 Dated 14.10.2005 for levy of voltage surcharge towards power released at lower voltage level then prescribed in SOP. Hon'ble Commission did not disallow the same but directed vide letter no. MERC/legal/129/Standard of Performace/0036 Dated 16.01.2006 non-applicant to incorporate voltage surcharge in proposal for ARR/tariff determination.

- 1) In the proposal for ARR and Tariff petition (on page no. 102) for the year 2006-2007 non-applicant submitted voltage surcharge on 20th July, 2006.

Levy of Voltage Surcharge

MSEDCL has filed a separate Petition for levy of a voltage surcharge on consumers who are supplied at lower voltage than the prescribed voltage as per MERC (Standards of Performance) Regulations. The Petition filed by MSEDCL has the following prayers, inter-alia:

- a) *“It is proposed to levy surcharge of additional 15% on the energy charges on all such consumers (existing as well as prospective) availing supply at a lower voltage level than stipulated.*
- b) *Permit MSEDCL to enhancement the load for the existing consumers upto 10 MVA at a lower voltage level.*
- c) *Permit MSEDCL to release load of prospective consumers above 10 MVA at voltage level lower than specified with prior approval of Hon’ble Commission.”*

The Commission may kindly consider incorporation of this provision in the revised tariff.

Hon’ble Commission neither approved nor rejected the same.

2) Again the proposal was submitted in petition for ARR for FY 2007-08,2008-09, 2009-10 and Multi year tariff for 2007-08 on 05.02.2007.

This proposal for consideration is submitted since MSEDCL is required to be compensated for the following three (3) primary reasons.

1. *Additional loss incurred by MSEDCL.*
2. *The net work and grid stability that would have been achieved in case supply is released at the specific level.*

3. *This proposal is primarily submitted for alleviating the problems faced by the consumer who are required to set up their own infrastructure for the specified voltage level. Since the consumer is unable to comply with the regulations, he may be levied voltage surcharge.*

Hence, MSEDCL would like to request Hon'ble Commission to accept following suggestions:

1. *It is proposed to levy surcharge of additional 15% on the energy charges including ASC on all such consumers (existing as well as prospective) availing supply at a lower voltage level than stipulated.*
2. *Permit MSEDCL to enhancement the load for the existing consumers upto 10 MVA at a lower voltage level. The same will be decided on case to case basis strictly on the basis of constraints and technical feasibility from release of such supply.*
3. *Permit MSEDCL to release load of prospective consumers above 10 MVA at voltage level lower than specified.*
4. *The above relaxation may be permitted for the period of three (3) years after which MSEDCL will submit the details for review and further directions from Hon'ble Commission.*

The same was neither approved nor reject by Hon'ble Commission in tariff order.

3) Further in Annual Performance Review (APR) Petition for FY 2007-08 under MYT Framework, Truing up for FY 2006-07 and Determination of ARR and Tariff for FY 2008-09

(MERC Case No. 72 of 2007) the proposal was submitted on 12.02.2008

Release of loads – provisions of Standards of Performance :-

The Standard of Performance Regulations, 2005 have specified the different loads that could be released at different voltage levels. Though these provisions are generally followed meticulously, at a times, the situation requires consideration of exception because of the constraints not necessarily attributable to the consumers. Some such constraints are :-

- i) Way Leave problems*
- ii) Insufficient / space constraints*
- iii) Non-availability of specified voltage levels in a particular area etc.*

Under these circumstances, exceptions are made and after the due diligence of a specific situation and after considering the technical feasibility of releasing loads on voltage levels lower than those specified in the Standard of Performance Regulations, 2005 are considered on merits.

The list of all such cases along with their load requirement an other details is enclosed as Annexure 7. It is submitted that all such cases had been dealt with individually and on merits, conditions while releasing such loads at lower voltages than those specified.

- a) In case of express dedicated feeders, the reading at sub-station or at the consumer end whichever is higher will be considered for billing.*
- b) In case of non-express feeders, the reading will be arrived after adding 2% of the meter reading to compensate for the losses by that specific consumer.*

Also it is informed that MSEDCL proposes to implement these conditions for all the existing consumers irrespective of the fact as to when the load released. The circular on this issue will be submitted to the MERC after the final decision is taken in the matter.

- c) Also a group of consumers who request for an express feeders and in case the same is feasible, such express categorization is done and higher ASC charges are levied in accordance with the provisions of the MYT Order dated 18.05.2007.*
- d) As requested earlier, it is once again submitted that all loads that are released at a voltages lower than those specified in the Standard of Performance Regulations, 2005 may be required to pay voltage level surcharge @ 15% of their energy bills. The reason for proposing this voltage level surcharge is that the consumer may make sufficient extra efforts and try to get the loads released at the specified voltage even if there are some system and technical constraints or other difficulties beyond the control of the consumer in normal course. The Commission is requested once again to consider levy of voltage level surcharge. At present such proposals are dealt on case to case merit basis and deserving cases are considered for sanction of load with a condition about applicability of voltage surcharge as may be decided by the Commission.”*

The non-applicant has requested Hon'ble Commission to approve the same which will be levied also on

existing consumers irrespective of fact as to when the load is released to avoid any indiscrimination. Hon'ble Commission has not approved or rejected it.

The consumer if aggrieved by 2% surcharge did not go for 132 KV required level and did not raise the dispute from September 2006 to March 2008 which he could have done so. The various reasons given by the non-applicant for approval for voltage surcharge also has meaning that the Industrial growth should not be hampered due to delay in sanctioning additional load for want of necessary infrastructure due to none-availability of space, ways & leaves and shortage of funds as the individual case may be. The Hon'ble Commission has directed the non-applicant to submit case wise details of consumers who have been sanctioned contract demand on merits basis on lower voltage level which the non-applicant has done in the proposal in the petition on 12.02.2008 in separate annexure. Hon'ble Commission has not approved or rejected it.

In this case the applicant agreed to pay 2% surcharge (now voltage surcharge) and bills were issued accordingly and paid by the applicant. This is not in various tariff orders right from the beginning but accepted by the applicant. Voltage surcharge will also make consumer to make sufficient extra efforts to go for desired level. Despite the 15% voltage surcharge proposed in the various petition only 2% was charged. The consumer has expanded his industrial unit due to the above sanction without paying anything for his 132 KV take in infrastructure and thus benefited.

Hence, as my view 2% surcharge should be continued to be recovered till the Hon'ble Commission approves /rejects the same. If at all it is decided by the Forum by majority to refund the amount of 2% voltage surcharged recovered from the consumer, I am of the view that in that event no interest should be allowed as applicant has paid the amount voluntarily and availed enhancement of contract demand to avoid any penalty.”

However, the other two members of the Forum namely Member Smt. Gauri Chandrayan and the Chairman while disagreeing with the Member-Secretary's opinion have expressed the following concurrent opinion:

“It is a matter of record that the applicant had a contract demand of 4000 KVA before 31.08.2006 and also that enhancement in contract demand by 3000 KVA was sanctioned to him by C.E. (Commercial) MSEDCL by his order dated 31.08.2006. The total sanctioned contract demand was 7000 KVA at 33 KV as against the prescribed permissible limit of 5000 KVA as per SOP Regulation. A special condition was incorporated in the sanction order that the applicant will be charged for additional 2% extra units on the energy units consumed by the applicant's plant in monthly energy consumed till the time the Commission determines surcharge for the power supply on lower voltage than the prescribed voltage as per Standards of Performance i.e. (2% additional units of energy consumption will be added for computation in the energy bills.) The other condition is that the applicant shall abide by to pay the additional surcharge whatever will be determined by the Commission for the power supply on lower

voltage level than the prescribed voltage as per non-applicant Company's Standards of Performance. These conditions were incorporated in the sanction order since MSEDCL was hoping to get sanction from the Commission for levy of voltage surcharge as mentioned in the sanctioned order. It is, however, pertinent to note that there was no approval on record of the Commission to charging of voltage surcharge at the time of giving sanction by the non-applicant on 31.08.2006. Not only this, but the Commission has also not till date accorded its approval for levy of voltage surcharge. This is clear from the text of four tariff orders so far issued by the Commission, latest being the tariff order effective from 01.06.2008. We have carefully gone through the text of these Four Tariff Orders and we are fully convinced about this. The applicant's representative has produced on record high Tension tariff booklets applicable w.e.f. 01.12.2003, 01.10.2006, 01.05.2007 and 01.06.2008. There is not even an iota of mention made in these HT tariff booklets about Commission's approval to levy voltage surcharge. Even the non-applicant has admitted in his parawise report dated 28.08.2008 that till this date charging of 2% additional units of energy consumption charged by the licensee has not been approved by the Commission in any of the Commission's tariff orders. His say is that though such a voltage surcharge is not specifically approved by the Commission, the Commission has nowhere stipulated that such a voltage surcharge if levied will be violation, of any of the provisions for its tariff order. The Commission's silence on MSEDCL's proposals of levy of voltage surcharge cannot be construed as deemed permission. On the contrary, it amounts

to non-consideration of these proposals and this in turn, amounts to disapproval. The very fact that there is no iota of mention made in the tariff orders to the effect that MSEDCL was or is permitted to levy such a voltage surcharge clearly indicates that MSEDCL should not have levied and recovered such a voltage surcharge.

It is a matter of record that MSEDCL had submitted its proposal for levy of voltage surcharge on consumers who are supplied power at voltage lower than the one prescribed under the SOP Regulations. Vide its letter dated 14.10.2005. In reply, the Commission vide its letter dated 06.01.2006 had informed MSEDCL as under:-

- a) Although different voltages based on the load have been prescribed in the SOP Regulations, it is possible that in certain cases due to technical constraints, MSEDCL may not be in a position to supply at voltage prescribed under SOP Regulations. MSEDCL may apply for exemption from the standards specified in SOP Regulations while submitting information on the matters covered under Section 59 of the Electricity Act, 2003. However, such exemption can only be sought in short-term. In a time-bound manner, Licensee shall have to develop the required infrastructure taking into account Standards of Performance.
- b) As regards MSEDCL's proposal for levy of voltage surcharge, this being tariff related issue, MSEDCL may incorporate this proposal in their application for ARR/Tariff determination.

Hence, MSEDCL submitted its proposal of levy of 15% voltage surcharge on the energy charges including additional supply charges on all such consumers, existing as well as prospective availing supply at voltage lower than the one prescribed MSEDCL also sought permission from the Commission to enhancement of the load for the existing consumers upto 10 MVA at lower voltage level and permit it to release load of prospective consumers above 10 MVA at voltage level lower than specified. MSEDCL said that this relaxation may be permitted for a period of three years after which MSEDCL will submit the details for review and furthers direction for the Commission. This was done in the tariff proposal submitted for FY 2007-08 submitted on or about 05.02.2007.

Earlier also, in the MSEDCL's separate petition for the year 2006-07 submitted to the Commission, a proposal of levy of voltage surcharge on similar lines was incorporated for Commission's approval.

Again in the tariff proposal for the year 2008-09 submitted on about 12.02.2008, a similar proposal was moved by MSEDCL saying that as requested earlier, it is once again submitted that all loads that are released at voltages lower than those specified in SOP Regulations may be required to pay voltage level surcharge at 15% of their energy bills. MSEDCL requested the Commission once again to consider levy of voltage surcharge. .

It is pertinent to mention here that the non-applicant was not able to show that the Commission has accepted MSEDCL's proposal of levy of voltage surcharge in

any of the tariff orders issued so far. Since voltage surcharge is a tariff related matter, the Commission's approval therefor was mandatory and it was an essential legal prerequisite before recovering such a charge. It is also to be noted that the non-applicant himself has admitted on record that till this date, 2% voltage surcharge has not been approved in any of its tariff orders by the Commission. This admission in itself is enough to conclude that levy of such a voltage surcharge has not been permitted so far by the Commission. Consequently, recovery of voltage surcharge at the rate of 2% extra units on the energy units consumed by the applicant's plant would become infructuous in the absence of specific approval to that effect from the Commission.

The non-applicant's submission that the Commission's silence about levy of voltage surcharge in its tariff orders amounts to implied permission of the Commission to levy such a charge is devoid of any logic, merit and legality.

The applicant has rightly relied upon provisions of Sections 45 and Section 62 of the Electricity Act, 2003 and also on Regulation 3.4.1 of the Supply Code Regulations and has rightly contended that MSEDCL has violated these legal provisions.

We are of the firm view that the applicant's representative's contentions are cogent, convincing and also legal.

A point has been made by the non-applicant that the applicant had given his free consent at the first instance for imposition of voltage surcharge and thereafter came before this Forum alleging that MSEDCL's demand is in equitable

and unjust. According to him, the MSEDCL's demand is proper and it was there with the full consent of the applicant. The applicant's representative's submission in this regard is that the doctrine of promissory estoppel can not be invoked if it is found to be inequitable or unjust in its enforcement. In this respect, he has rightly cited and relied upon the Commission's order dated 06.05.2008 passed in case no. 93/2007 in the petition filed by the M/s. Yash Agro Energy Ltd. in which the Commission ruled that the doctrine of promissory estoppel can not be invoked if it is found to be inequitable or unjust in its enforcement. It is pertinent to mention here that the Member-Secretary of this Forum and the non-applicant have not offered any comments on the ruling of the Commission as elaborated above. Moreover the Electricity Ombudsman has held in its order dated 27.08.2008 in representation no. 46/2008 filed by M/s. Unijules Life Science Ltd Vs. MSEDCL that obtaining of consumer's consent (for imposition of any condition) not in conformity with the Law would be impossible to be enforced. In this case, obtaining the applicant's consent for imposition of condition to levy 2% voltage surcharge was not in conformity with the Law.

MSEDCL is recovering 2% voltage surcharge in the absence of approval of the Commission. Hence, recovery of such a voltage surcharge is abinitio illegal.

The applicant also pleaded that the distribution licensee cannot show undue preference to any class of consumers or discriminate in consumers as per provision of Section 45 (4) of the Electricity Act, 2003. He has produced on record copies of sanction orders in respect of consumer

M/s. Saggu Castings Ltd. having a contract demand of 8000 KVA at 33 KV level against the permissible maximum limit of 5000 KVA while in the case of M/s. Sanvijay Rolling & Engineering Ltd a contract demand of 2200 KVA was sanctioned at 11 KV level against the maximum permissible limit of 1500 KVA without charging any voltage surcharge. Quoting these cases, he submitted that the applicant has been discriminated.

The non-applicant on his part has denied this contention and said that the circumstances in which sanction was given in these two cases respectively on 21.03.2005 and 12.04.2005 are not identical with those of the present applicant & they are not comparable. The fact, however, remains that looking to the circumstances of the present case, discrimination is clearly visible particularly in view of the fact that even as on to-day there is no approval on record of the Commission to levy such a voltage surcharge.

A point has been raised by the non-applicant about the line losses being incurred by MSEDCL in the event of sanction of power at lower voltage than the one prescribed under SOP Regulations. However, the applicant's representative has replied that line losses, if any, are T&D losses and they are not recoverable from the consumers and further that MSEDCL has made provision in this respect in its proposal of Annual Revenue Requirements and Tariff determination. The reason given by the applicant's representative is quite convincing and as such, the non-applicant's contention in this respect is devoid of any merits.

The other contentions raised by the non-applicant are of no consequence.

In view of above position, we are of the opinion that levy of voltage surcharge on the applicant is abinitio illegal and recovery thereof cannot sustain in the eyes of law and the same cannot be recovered from him until the Commission determines the issue of levy of voltage surcharge. Consequently, the excess amounts charged towards 2% voltage surcharge deserves to be refunded. The non-applicant will have to refund excess amounts recovered towards the 2% voltage surcharge alongwith interest at Bank rate as provided in Section 62 (6) of the Electricity Act, 2003.

As provided in Regulation 8.4 of the said Regulations, where the members differ of any point or points, the opinion of the majority shall be the order of the Forum.

In view of this legal position, the concurrent opinion expressed by the two Members namely Member Smt. Gauri Chandrayan and the Chairman shall be the order of the Forum.

Hence, this Forum directs the non-applicant to refund to the applicant the excess amount recovered from him towards 2% voltage surcharge along with interest at Bank rate as per Section 62 (6) of the Electricity Act, 2003.

The Cell's order dated 21.08.2008 challenged by the applicant stands quashed.

The applicant's grievance application thus stands disposed of in terms of this order.

