

M.P. ELECTRICITY REGULATORY COMMISSION
BHOPAL

SUB: IN THE MATER OF SUPPLY OF POWER UNDER CLAUSE 4.17 OF THE M.P. ELECTRICITY SUPPLY CODE – PETITION NO. 73/06 – REVIEW OF THE ORDER DATED 04/04/2007.

M/s. Shobhan Enterprises Pvt. Ltd. - Petitioner
Makshi, Distt. Shajapur

V/s.

M.P. Paschim Kshetra Vityut Vitaran Co. Ltd. - Respondent
Indore

ORDER

(As passed on this day of 16th April , 2008)

Shri B.K. Dubey, Advocate and Shri Anil Yadav, Representative appear on behalf of the Petitioner.

Shri K. Shiva, S.E. (Commercial), Shajapur appears on behalf of the Respondent.

2. The petition is in the matter of review of the Commission's order dated 04/04/2007 passed in Petition No. 73/06.

3. The Commission vide order dated 04/04/2007 has directed that if the Petitioner is in any way aggrieved on the recovery of old arrears, he is at liberty to approach the Grievance Redressal Forum. In pursuance the Commission's direction, the Petitioner has filed a petition before the Grievance Redressal Forum, Indore on 16/07/2007. This petition was limited to refund of Rs. 3.06 Lakhs collected by the Respondent with the temporary connection, as arrears of the old consumer were not payable as per amended clause 4.17 of M.P. Electricity Supply Code 2004.

4. The Forum has rejected the petition. The Petitioner has not challenged the order passed by the Forum because the Petitioner's view is that the Forum has no authority to interpret the order. Therefore, the Petitioner approached the Commission for review of its order. The Petitioner has requested that the Commission may kindly clear the Petitioner's grievance in the matter mentioned in para 5 of the Order dated 04/04/2007. The Petitioner has referred to the submission made before the Forum that a

clarificatory order is being sought from the Commission. In pursuant to it, the Petitioner has submitted this review petition on 21/09/2007.

5. During the last hearing, the Commission has directed the Petitioner to furnish the reply. The Petitioner submits the reply today stating that the Clause 4.17 is not applicable as the Petitioner purchased the said premises in government auction pursuant to Hon'ble High Court's order, without any liability. The Petitioner has further submitted that the distinction between a new connection and reconnection has been elaborated by the Hon'ble Gujarat High Court in the case of Ahmedabad Electricity Co. Ltd. which covers the cases of auction by Financial Institutions as well as auction by the Official Liquidators. It has been held in the above case that the recoveries of old dues cannot be effected in case of new connection applied for by the auction purchaser.

6. The Petitioner has further submitted that as per judgment of the Hon'ble Supreme Court in the matter of S. Nagraj & others V/s State of Karnataka & another, 1993 Supp(4) SCC 595, it has been held "It is the duty of the court to rectify, revise its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and the implementation of those orders would have serious consequences".

7. The petitioner also submitted that the Respondent is a Government company, so it amounts to State and other Authorities, which have to perform constitutional duties, but the Respondent is neither fair nor transparent and reasonable. Therefore, the review is to be decided in pursuit of the facts and circumstances of the case and the law laid down by the apex court.

8. The Commission heard both the parties at length today. During the course of hearing, the Petitioner has reiterated that as per amended clause 4.17 of the M.P. Supply Code 2004, the Petitioner is not liable to pay the old dues, therefore, the review application submitted by the Petitioner may kindly be accepted.

9. In reply the learned advocate on behalf of the Respondent has submitted that in this case the pre-amended clause 4.17 of the Supply Code is applicable and not the amended clause 4.17. The Respondent has also referred to the order passed by the Hon'ble Supreme Court in Civil Appeal No. 2846 of 2007 (2007, 8 Supreme Court Cases 381), wherein it has been held that the State Electricity Regulatory Commission has only the power to adjudicate disputes between the licensees and generating companies as per section 86(1) (f) of the Electricity Act 2003. It cannot adjudicate the disputes relating to grievance of individual consumers. The Respondent has also relied upon the order passed in WPS No. 2994/2005 by

the Hon'ble High Court, M.P. Indore Bench. It was held that petitioners can always seek appropriate remedies before the Electricity Ombudsman against the order of the Forum.

10. Considering the facts and circumstances of the case and submissions made by both the parties, the Commission is of the view that there is no apparent error in the order passed by the Commission on 04/04/2007 in Petition no. 73/07. The Commission has merely directed the Petitioner to approach the Grievance Redressal Forum. The Commission is also in agreement with the contention of the Respondent that as per the provisions of Section 86(1) (f) of the Act, the Commission can only adjudicate the dispute between the licensees and the generating companies.

11. The petitioner has submitted this petition for review of Commission's order dated 04/04/2007 and has sought clarificatory order in the matter mentioned in para 5 of the order. The Commission has not decided the issue of recovery of old dues as it is the matter to be decided by the Forum. Therefore, the Commission vide order dated 04-04-2007 gave liberty to the Petitioner to approach the Consumer Grievance Redressal Forum. Under these circumstances, no clarificatory order in this regard, is required. The Commission also drew attention of the petitioner to the clause 42 (6) of the Electricity Act, 2003 which provides that any consumer who is aggrieved by non-redressal of this grievances by the consumer Grievance Redressal Forum, may malce a representation to the Ombudsman. The Commission however directs the petitioner that in case he opts to approach the Ombudsman within a period of four weeks, in that case the Ombudsman shall not refuse to hear the Petitioner on the ground of limitation. Since the Commission finds no apparent error in its order dated 04/04/2007, the review petition is hereby dismissed.

With the direction aforesaid, the Commission directs to close the case.

Ordered accordingly.

(K.K. Garg)
Member (Engg.)

(Dr. J.L. Bose)
Chairman

