

Date: 22.4.2008

Sub: In the matter of petition u/s 94 of Electricity Act, 2003 and section 9 of Vidyut Sudhar Adhiniyam, 2001

ORDER
(Petition No. 45/07)

M/s Indore Institute of Orthopedic &
Traumatology Pvt. Ltd., (SNG Hospital), Indore ----- Petitioner

Vs.

M.P.Pashchim Kshetra Vidyut Vitaran Co. Ltd., Indore ----- Respondent No.1
S.E., M.P.Pashchim Kshetra Vidyut Vitaran Co. Ltd. ----- Respondent No. 2

Shri Umesh Nigam, Sr. Advocate appears on behalf of the Petitioner.

Shri A.W.Khan, ASE appears on behalf of Respondent No.1 & 2.

2. As per the information submitted by the Respondents;

(i) The petitioner had applied for 90 KW LT connection to the MPSEB (licensee) to run the hospital. The petitioner had executed the work of installation of 200 KVA transformer through contractor and paid the supervision charges to the licensee. According to the General Conditions of Supply and prevailing Rules and Regulations, the work so completed has been handed over to the Board and became the property of the MPSEB who is maintaining the same till date. The connection was served on 31.10.2001. The billing to the petitioner was being done at LT tariff w.e.f. the date of connection.

(ii) Further, in compliance to the tariff order dated 30.11.02 effective from 19.12.02, the billing to the above consumer was changed to 11 KV general purpose tariff instead of LT, for a load of 90 KW after allowing the grace period of 6 months (ended on 30.6.03) for completion of necessary formalities for conversion of LT to HT connection. The necessary notices regarding conversion of tariff have been issued to the petitioner.

(iii) In compliance to the notices issued, the petitioner had applied for sanction of 70 KVA contract demand on HT.

(iv) The petitioner did not install another transformer within his premises and requested on 12.3.04 to continue to use the aforesaid 200 KVA transformer. The permission was

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granted by the licensee vide letter no. CE/IR/Com/HT/4440 dated 1.4.04 as a special case to avail supply on existing arrangement of supply for a period not more than six months on existing metering arrangement system i.e. on LT side for which the petitioner is required to pay hire charges and debiting the units @ 3% towards transformation losses.

(v) The agreement was then finalized on 15.4.2004 stating that:

- (a) 90 KW load w.e.f. 19.12.2002
- (b) 70 KVA load w.e.f. the date of conversion of supply from LT to HT.

(vi) The petitioner has not complied with the conditions of permission granted vide letter dated 1.4.04. The petitioner has then raised objection on various issues like installation of transformer, hire charges etc. before the Grievances Redressal Forum but the Forum passed the order on 20.6.05 stating that the transformer installed by the petitioner while availing LT connection is the property of the Company and the petitioner is directed to install their own transformer for his HT connection. The petitioner then approached the Hon'ble High Court against the above order of the Forum on 29.8.05 but subsequently withdrew the case on 11.8.06 and filed the appeal before the Electricity Ombudsman on 31.1.07 for the following relief:-

- (a) To set aside the Forum order dated 20.6.05
- (b) To direct the respondent to allow the petitioner to use existing transformer for his HT connection.

(vii) A supplementary bill amounting to Rs. 1,48,727.00 was issued to the petitioner on 16.6.07 towards difference of minimum charges on account of mistake in billing

(vii) The petitioner paid 1/3rd of the disputed amount on 29.6.07 as directed by the Electricity Ombudsman. However, the Electricity Ombudsman vide order dated 8.1.08 has rejected the appeal in terms of clause 4.10 (a) of MPERC (Establishment of Forum & Electricity Ombudsman for Redressal of the grievances of the consumers) Regulations, 2004 with the directions to the petitioner and the respondent to act as per the orders of the Commission in the above matter.

(viii) Meanwhile, the petitioner has filed a petition before the Commission on 20.8.07 and prayed for the following relief:

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- (a) The respondents be restrained to ask the petitioner for installing and commissioning another transformer in his premises when his previous transformer is already working.
- (b) The respondents shall be restrained from recovering any amount on the basis of letter dated 16.6.07 on the basis of supplementary bill.
- (c) The respondents be directed to refund Rs. 50,000.00 recovered by them from the petitioner which it was constrained to deposit to maintain its regular electricity supply.
- (d) The respondents shall be directed to refund the hire charges and transmission charges totaling to Rs. 62,000.00 recovered through the previous bills and shall be restrained to recover the same in future from the petitioner.

3. The petitioner has also made an additional submission that as per "Sales of Goods Act, 1930" the petitioner is the owner of the transformer because he had never sold the existing 200 KVA transformer by executing any agreement to the respondent. It is further stated that the provision "that the licensee shall be the owner of the all appliances used for supply of electricity" has been made in the Electricity Supply Code, 2004 so that transformer can be maintained by the licensee being the technically competent and authorized body to deal with the supply of electricity to the consumer.

4. The petitioner has also submitted the copies of orders passed by the Hon'ble High Court of Calcutta and Rajasthan ERC. He has further stated that according to the order of the Hon'ble High Court, Calcutta the licensee is not entitled to recover the dues after the period of 2 years from the date when such sum becomes first due as the same had not been shown continuously as recoverable as arrears of charges of electricity supplied. The Commission during the hearing on 25.3.08 has corrected the assertion of the petitioner's representative that the aforesaid order of Hon'ble High Court of Calcutta is limited to non entitlement of the licensee to cut off the supply of electricity to the petitioners.

5. Having heard the petitioner and respondents, the Commission has relied on the following provisions:

- (i) As per sub-section (1) of section 49 of the Electricity (Supply) Act, 1948;

" Subject to the provisions of this Act and of regulations, if any made in this behalf, **the Board may supply electricity to any person** not being a licensee **upon such terms and conditions as the Board thinks fit** and may for the purposes of such supply frame uniform tariffs."

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(ii) Section 79 of the Electricity (Supply) Act, 1948 as amended by Act 20 of 1983 provides Power to make rules to the Board as under ;

“ 79. Power to make regulations.-- The Board may make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely :--

(a) -----

(b) -----

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(k) any other matter arising out of the Board's functions under this Act for which it is necessary or expedient to make regulations.”

(iii) In exercise of the powers delegated, the Board had framed “ General conditions for supply of electrical energy and scale of miscellaneous and general charges” . Clause -4 (c) & (g) of the above general conditions for supply provides;

“(c) The consumer shall provide free of cost to the Board necessary land belonging to the consumer and afford all reasonable facilities for bringing in not only the direct cables or overhead lines connecting Board's other consumer; and shall permit the Board to provide all requisite switchgear and connections thereto on the above premises and to furnish supply to such other Consumers through cables and terminals situated on the Consumer's premises, provided supply to the Consumer in the opinion of the Board is not thereby unduly affected.

(g) The service line notwithstanding that a portion thereof has been paid for by the Consumer, shall be the property of the Board which shall maintain it at its cost and the Board shall also have the right to use the service line and connection for supply of energy to any other person.”

In view of the above rules and provisions under the Electricity (Supply) Act, 1948, the 200 KVA transformer may be considered as the property of the Board (licensee) irrespective of the location i.e. whether it is within the premises or outside the premises of the petitioner or whether the cost of transformer is paid by the petitioner or not. Further, with delegation of power to the Board to make rules under the Electricity (Supply) Act, 1948 (which was passed by the Central Legislature and received its assent on 10th September, 1948), the provisions of Sale of Goods Act, 1930 shall not be applicable in this case.

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(iv) As per point 10 (p) of Tariff Schedule LV-5 for LT Industrial consumers in the tariff order issued on 30.11.2002,

“ The foregoing tariffs are applicable to connections having connected load not exceeding 100 HP. Consumers having existing load in excess of 100 HP are allowed time till 30th June,2003 for conversion of their connection from LT to HT supply. Such consumers will have to pay transformer rent and 3 % losses separately up to the time the transformer is installed by the consumer. In future, if any consumer is found having connected load more than 100 HP, the consumer will be required to convert to HT within six months from date of checking.”

(v) As per point 10 (q) of Tariff Schedule LV-5 for LT Industrial consumers in the tariff order issued on 30.11.2002,

“ In case of any dispute on applicability of tariff on a particular LT category, the decision of the Commission shall be final and binding.”

(vi) The Commission , in tariff schedule LV-5 tariff 5.5, had provided tariff for load above 100 HP up to 150 HP to facilitate billing till the connection is changed to HT category as mentioned in point 10 (p).

(vii) As per the tariff orders issued by the Commission after 30.11.2002, tariffs were also determined for a load of more than 100 HP and up to 150 HP at LT category.

6. Special Clause 22 (b) (3) of the HT agreement dated 15.4.04 between the Petitioner and the Respondent provides as under:

“Any dispute pertaining to the period prior to commencement of this HT agreement shall be governed by the terms and conditions of the LT agreement dated 31.10.01 read with supplementary agreement dated _____ for 90 kW connected load.”

7. Keeping in view various provisions of the tariff orders, Electricity Supply Code, 2004 and the powers delegated to the licensee (Board), the Commission has noted that although the Petitioner was required to convert his supply from LT to HT category by 30.6.2003 and complete the necessary formalities including execution of a fresh agreement, the same could not be done and the Petitioner continued to avail supply in LT

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category. Further, the subsequent tariff orders had determined tariff up to 150 HP in LT category.

The Commission, therefore, directs that the petitioner shall be treated as LT consumer and billed at LT tariff applicable for 90 KW connected load as per LT tariff orders issued from time to time and payments made during the billing period shall be adjusted against the revised bills. Further, the consumer shall also have to pay transformer rent and transformation charges etc. as per rules.

8. With the above directions, the petition no. 45/07 stands disposed off.



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



(Dr. J.L.Bose)
Chairman