

Petition No. 23 of 2007

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

E-5 Arera Colony "Metro Plaza" (5th Floor) Bittan Market
Bhopal-462 016

IN THE MATTER OF REVIEW PETITION U/S 94 (f) OF THE ELECTRICITY ACT
2003 AGAINST THE ORDER DATED 03.04.2007 PASSED BY THE COMMISSION

M/s Chhtra-Chhaya Construction Pvt. Ltd. - Petitioner
28-5 Janki Nagar Extension,
Indore

V/s

The C.M.D.,
M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.,
Indore

ORDER

(As passed on this day of 13th June, 2007)

Shri P.L. Nene, Consultant and Shri Ghanshyam Das Sanghi, Advocate appear on behalf of the Petitioner. Shri P.K. Ajmera, SE, O&M, MPSIB, Indore and Shri K.K. Laad, Addl. SE appear on behalf of the Respondent.

2. This review petition was filed by the Petitioner on 16.05.07 as a review petition under section 94 (1) (f) of the Electricity Act, 03 against the order dated 03.04.2007 (Petition No. 72 of 05) passed by the Commission.

3. The petitioner has submitted this review petition on the ground that:-

(a) The Commission has not considered the contents of para 6 & 7 of the order dated 10.03.05 wherein it was decided by the Commission that the system strengthening charges covering supply affording charges and system charges are

not recoverable from those consumers who have deposited these charges prior to 01.01.2005. The petitioner states that it is an omission. The petitioner has pointed out the observation of the Commission in its order dated 10.03.2005 that the agreement can not said to be executed till the consumer has confirmed it by making payment of all the charges prevailing at that time.

(b) The petitioner has further stated that in its order dated 03.04.2007 (para 4), the Commission has mentioned the respondents' submission that the post dated cheque for the fourth installment to be made in December, 04 was dishonored and a case regarding the same is pending under section 138 of the Negotiable Instruments Act. In this respect the petitioner has alleged that the Commission has not noticed the fact that same averment of the respondent is without any pleading and totally false and the respondent has misguided the Commission. The petitioner has stated that the petitioner specially claims that no case under section 138 under the Negotiable Instruments Act has been filed against the petitioner, because no such averment has been made by the respondents and no notice is received by the petitioner. Thus, a reference to the averment in the order is an error apparent. But, in their further submission on the date of hearing on 21.8.2007 the petitioner has stated that the Commission's order must be based on the decision of the criminal case pending in the court of chief judicial Magistrate, Dhar.

(c) No status report was submitted by the respondents as directed by the Commission on 13.12.2005 nor insisting on a report is an omission.

(d) No work was done in sector 'D', as the collector has not allowed the development of this sector till 01.01.2005. Allowing the recovery of charges for the portion of the colony, even though the land changeover was not approved by the Collector, is an error apparent.

(e) The petitioner has stated that the Commission postponed the decision in the case in the context of new regulation being framed and the Commission required the petitioner to actively participate. The final decision of the Commission does not mention what the thinking of the Commission was in requiring the petitioner to wait for new regulation and this is an error apparent.

4. During the course of hearing today, the respondent in its submission has stated that:-

(a) It has already been brought to the knowledge of the Commission that the petitioner ought to make the payment of all the charges at a time, but the respondents have considered the petitioner's request vide the petitioner's letter dated 27.3.2004 and allowed them for depositing the amount in installment vide respondent's letter dated 26.4.2004. Accordingly, the petitioner had submitted four post-dated cheques out of which three cheques were honored and the cheque for the fourth installment of payment, which was scheduled to be made in December, 04, was dishonored by the bank and this cheque was dishonored as per the "Stop-Payment" advice of the petitioner. The respondents have pointed out that the petitioner had made part payment of the charges to be paid availing the benefit of the installment facility permitted by the respondents on the petitioner's request and as such, the instant case does not come in the category of consumers, who have not deposited these charges prior to 01.01.05. The respondents have further stated that the Commission having considered and keeping in view the facts placed before the Commission by the respondents from time to time during the course of hearing of the petition No. 72/2005, has passed the order dated 03.04.07. Since the provision contained in the order for recovery of miscellaneous and general charges issued on 09.12.2004 is not applicable in this case, the petitioner is not entitled for exemption from charges leviable at the prevailing charges.

(b) The respondent has stated that all the facts and position in the matter, as per the directives given by the Commission in the order dated 13.12.05, have been placed before the Commission during the course of hearing of the petition. As such, it was stated that the allegation made by the petitioner in the petition against the respondents that no status report was submitted, has no substance.

(c) The respondents have stated that as per respondents' records of O&M division, Pithampur, the case/complaint No. 2/6 (New No. 2/7) in the matter of dishonored cheque is before the ADJ Class I, Dhar. They have stated that the stage of argument by the complainant has been completed and the case is pending for orders. The respondents have stated that the presentation of the written evidence in this respect will be produced during the course of hearing.

5. In view of the above, the respondents have requested the Commission to dismiss the review petition. They have further stated that the petitioner had applied for electrification of the entire project for which complete estimate was prepared for the complete project as it was permitted by the Joint Director, Town and country planning, Indore and at the petitioner's request, the estimated amount was allowed to be paid in four installments. During the course of hearing today, the respondents have stated that the Joint Director had accepted the layout for total land of 14.35 hectare and ordered to compulsorily develop 15% of the complete area for backward low income group of persons on priority. They have pointed out that the 15% area is situated in part of land, which is located in sector D. The respondents have further clarified on the petitioner's allegation in their petition that the work has been done in sector 'A' and 'B' is irrelevant, as the electrification work was sanctioned as a whole and not sector-wise. They have further stated that the criminal case filed against the petitioner for dishonored cheque is a separate matter and is pending before the criminal court.

6. Having heard both the parties, the Commission makes it clear that:-

(a) The Commission has not relied upon the contention of the respondent about the pendency of the case under the provisions of Negotiable Instruments Act. The Commission has only mentioned in the order as to what the respondents have submitted during the course of hearing. Any case under the provisions of the Negotiable Instruments Act is related to the criminal liability and as such is out of the ambit of the Commission.

(b) The second main ground for review as mentioned by the Petitioner is that the Commission has not considered the contents of para 6 & 7 of the order dated 10.03.05. The order dated 10.03.05 of the Commission is not relating to this petition and the facts of this case are different. As per the respondents, the petitioner applied for electrification of the 'Chhatra-Chhaya Colony' on 23.03.03 and thereafter complete estimate was prepared for the entire colony. Sanction was accorded on 14.04.03. On the request of the petitioner vide their letter dated 27.3.2004 quoting financial crisis and requesting the respondents to allow deposit the amount in installments, the respondents allowed the petitioner to deposit the total amount of system strengthening charges of Rs 32,91,300/- in four installments in April, 2004. The petitioner agreed to it and three post dated cheques were honored and the fourth post dated cheque issued by the petitioner was scheduled to be paid in December, 04 but it was dishonored as per the petitioner's instructions for stopping payment. The petitioner has confirmed that the estimates and other formalities and payments were also to have been made prior to 01.01.05^{and} only at the request of the petitioner; the respondents have allowed the fourth installment to be made in December, 2004.

(c) Regarding the submission of the petitioner that before the change-over is approved by the collector, allowing the recovery of charges is an apparent error, the respondents have submitted that the order dated 25.01.07 of the Collector, Dhar is related to release of the land from reservation for weaker sections and permission to sell to others. The respondents have stated that the contention of the petitioner that the Collector had not allowed the development till 01.01.05, is totally false and misleading. In this connection, the Commission would like to point out that during the course of hearing on 25.04.06, the Commission enquired

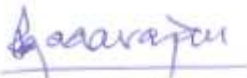
the petitioner about the colonizer certificate given by the Collector, Dhar on which the petitioner confirmed the same.

(d) Regarding the petitioner's contention that the final order of the Commission not mentioning what was the thinking of the Commission in requiring the petitioner to wait for new Regulations, is an error apparent, the Commission would like to state that it can not be considered as an error apparent, as the Commission need not mention about the reasons for requiring the petitioner to wait for new regulations. However, the Commission would like to point out that even the Commission's order dated 10.3.2005 would not be applicable in the instant case as explained in the next paragraph.

7. Having considered the submissions made by both the parties and having heard the arguments, the Commission is of the opinion that there is no apparent error in its order dated 03.04.2007. From the records submitted by the respondents, it is clear that the petitioner has made the prayer for electrification of the colony on 23.03.03 and the petitioner had accepted the liability of the system strengthening charges also. At the request of the petitioner, the payment was allowed to be made in four installments of which three payments have been credited to the account of the respondents by December, 2004 and the fourth installment of payment was required to be made in December, 2004 and this was a part and parcel of the whole transaction. As such, the Commission's order dated 10.03.05 cannot be invoked for this case on the plea that the payment of fourth installment was not made before 01.01.2005.

8. As there are no errors apparent that could be proved by the petitioner, the Commission is not in a position to allow the review petition and decides to close the case on the grounds as aforesaid.

Ordered accordingly.



(R. Natarajan)
Member (Econ.)



(D. Roybardhan)
Member (Egg.)



(Dr. J.L. Bose)
Chairman