

M.P. ELECTRICITY REGULATORY COMMISSION
BHOPAL

SUB: THE PETITION IN THE MATTER OF LIMITING THE ELECTRICITY CHARGES PAYABLE DURING THE STRIKE, LOCKOUT PERIOD UNDER THE PROVISIONS OF SECTION 9 OF THE M.P. VIDYUT SUDHAR ADHINIYAM, 2000 AND CLAUSE 23 OF THE HT SUPPLY AGREEMENT.

M/s. PBM Ltd.,
213, Nariman Point,
Mumbai

- Petitioner

V/s.

The CMD,
M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd.,
Jabalpur

- Respondent

ORDER

(Passed on this day 16th October 2007)

Shri P. L. Nene, Consultant appears on behalf of the Petitioner.

Shri O. S Parihar, S.E. appears on behalf of M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd., Jabalpur

1. The petitioner has submitted this review petition against the Commission's order dated 04.04.2007 in Petition No. 22/05 in the matter of limiting the electricity charges payable during the strike, lockout period under the provisions of Section 9 of the M.P. Vidyut Sudhar Adhiniyam 2000 and Clause 23 of the HT Supply Agreement.

2. The petitioner has submitted this review petition on the following grounds:-

- (i) The Commission has ignored the interim orders passed on 05.04.2005, 19.07.2005 and 18.10.06 in its final order dated 04.04.2007, so it is an apparent error.
- (ii) No rejoinder was submitted by the respondent on the issue of not completing 60 days. There is an apparent error in the Commission's impugned order in recording respondent's version without giving same in writing.
- (iii) Though the Commission has notified the amendments in Clause 11.1 and 11.2 of the M.P. Supply Code, 2004 on 09.02.2007, the only point to be resolved is the application of the revised clause to the petitioner, as the amendment to the Supply Code will be applicable prospectively, the respondent will be unable to provide relief to the petitioner. In this way through the faulty subordinate legislation, the

Commission has caused enrichment of the utility without supply of energy to the extent of Rs. 34.14 Lacs.

3. Therefore, the respondent has prayed to make applicable the abovementioned amendment to the petitioner from back date. The petitioner in its additional submission dated 11.09.07 prayed for review of the order passed on 04.04.2007 and sought issue of a special order allowing benefits of amended conditions of Supply Code to the petitioner under clause 11.15 of the Supply Code, 2004.

4. During the course of last hearing, the Commission has viewed seriously the non-submission of reply by the respondent. In the interest of justice the Commission granted time again and directed the respondent to reply to both the additional submissions made by the petitioner dated 03.08.07 and 13.09.2007 by the next date of hearing. In response to the additional submission made by the petitioner, the respondent has said that as the Commission has made applicable the above amendment from the date of its publication in the gazette i.e. from 9.2.2007, hence the petitioner is not entitled to claim relief of reduced supply under the said amendment. Therefore, the petition is liable to be rejected.

5. The case is listed for hearing on 16.10.2007. The Commission heard both the parties. Having considered the submissions made by both the parties, the Commission finds no apparent error in its order dated 4th April 2007 in Petition No. 22/05. In this case, the respondent has refused the petitioner to give reduced supply on the basis of the existing provisions of M. P. Electricity Supply Code prevailing at that time. The Commission has also made it clear in its order dated 4th April 2007 that the notification of the amendments in clause 11.1 and 11.2 under the Supply Code have been made applicable from the date of its publication in the Official Gazette from 09.02.2007. Therefore, the petitioner is not entitled to the relief sought by him on the ground that the said amendment has not been made applicable from the date of enforcement of M.P. Electricity Supply Code, 2004.

6. The petitioner has submitted that the final order issued on 04.04.2007 has an error apparent as it does not take into consideration the earlier interim orders dated 5.4.2005, 19.7.2005 and 18.10.2006. In the Commission's order dated 19.07.2005, the Commission has directed that the matter of any amendments may be reviewed by the Supply Code Review Committee. The petitioner may submit his point during the course of the meeting. Thereafter, suitable order will be passed in this regard separately. With the direction aforesaid, the Commission decided to close the case. Thereafter, the petitioner has requested to reopen the case with the request to the Commission that some of the recommendations of the Review Panel have been approved by the Commission and some have been noted down. Going

through the proceedings referred to by the petitioner, it is observed that the petitioner has drawn the attention of the Commission to some discrepancies in the provisions of the M.P. Supply Code, 2004, particularly in Clause 11. Therefore, the Commission directed that the matter be reviewed by the Supply Code Review Committee and the petitioner may submit his point during the course of the meeting. Thereafter suitable order may be passed in this regard separately. It does not convey the meaning that the Commission has decided that the proposed amendment will be made applicable in this case. The Commission has clearly mentioned in this order that the petitioner may submit his points during the course of meeting of the Review Panel, therefore, the petitioner may submit his point during the course of the meeting. Thereafter, suitable order will be passed in this regard separately. As amendment has been made applicable prospectively, it cannot be made applicable in petitioner's case from the date of enforcement of the Supply Code, 2004.

7. In regard to the petitioner's contention that no rejoinder was submitted on the issue of not completing 60 days, the Commission is of the view that it makes no difference. The onus of proving his case lies on the petitioner. It has been mentioned in the order that the petitioner was not entitled to get relief under the provisions of the said regulations prevailing at that time.

8. The petitioner's contention that through faulty subordinate regulation, the Commission has enriched the utility, is totally baseless and to some extent absurd. It is the established principle of law that any issue must be decided in accordance with the provisions of law and the regulations existing at that time. Therefore, the amendment made thereafter by order and notification issued by the Commission separately, is nothing to do in this case. The petitioner has submitted the original petition and thereafter through this review petition, knowing well the provisions of the regulation that he could not get relief from the utility under the then existing provisions. Therefore, he has submitted that the said amendments be made applicable retrospectively.

9. The petitioner has raised a new point in its additional submission for issuing the Special order allowing benefits of amended conditions of Supply Code to the petitioner under Clause 11.15 of the Supply Code. This clause provides that if any difficulty arises in giving effect to any of the provisions of this Code, the matter may be referred to the Commission who after consulting the parties affected, may pass any general or specific order, not inconsistent with the provision of the Act or any other enactment relating to the supply of electricity for the time being in force. This request of the petitioner cannot be accepted because the request of the petitioner is inconsistent with the provisions of the Act,

or enactment of relating to the supply of electricity for the time being in force. The amendments in the above clause came into force from the date of publication of the Amendment i.e. 09.02.2007. Therefore, the request of the petitioner cannot be considered or otherwise it may create financial complications in so many other cases also.

10. With the reasons aforesaid, the Commission finds no force in this petition as there is no apparent error in its order. Therefore, the Commission decides to close this case.

Ordered accordingly.

(R.Natarajan)
Member (Econ.)

(D. Roybardhan)
Member (Engg.)

(Dr. J. L. Bose)
Chairman