

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 68 of 2005

In the matter of
Petition filed by Dr. Kirit Somaiya and Shri. Prakash Mehta for review of the
Commission's Order dated 25th February 2006 in Case No. 4 of 2004

Dr. Pramod Deo, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Dated: 10th July, 2006

ORDER

Dr. Kirit Somaiya, Ex-Member of Parliament jointly with Shri Prakash Mehta, MLA and President of Bhartiya Janata Party filed a Petition on 23rd March 2006 seeking review of the Commission's Order dated 25th February 2006 in Case No. 4 of 2004 on the ground that, subsequent to passing of the said Order, the Ministry of Power, has envisaged supply of additional power to the city of Mumbai and consequently decided to spare Mumbai from load shedding. BrihanMumbai Electric Supply and Transport Undertaking ("BEST") is a party respondent to the said Petition. The Petitioners also filed an amendment application seeking to join the Ministry of Energy (Government of India) and Ministry of Energy (Government of Maharashtra) as parties.

2. At the admissibility hearing held on 19th April 2006, Counsel for the Petitioners apprised the Commission that the Hon'ble Minister of Power had held a meeting on 13th March 2006 to review the power supply position in Maharashtra. He also apprised the Commission that the said meeting was attended by the Energy Minister (Maharashtra) and other senior functionaries of the Department of Energy of the Government of Maharashtra, Central Electricity Authority, Powergrid/WRLDC, NTPC, and all power supply companies of Mumbai, i.e., BEST, Reliance Energy Limited, Tata Power Company ("TPC"), and Maharashtra State Electricity Distribution Company Limited ("MSEDCL").

3. Referring to the aforesaid meeting of 13th March 2006, Counsel submitted that the Hon'ble Minister of Power, while identifying an action plan, mentioned that necessary steps were being taken for augmenting capacity so that Mumbai has sufficient power capacity to take care of the growth in power demand. Counsel further submitted that in the said meeting it was decided that, considering the action plan laid down for making available additional power to Mumbai and that TPC has planned to commission one power plant of 100 MW capacity and another of 250 MW, there shall be no load shedding in Mumbai. Referring to the representations made by BEST in the said meeting which have been recorded at paragraph 2 of the minutes of meeting held on 13th March 2006, Counsel submitted that BEST has identified the availability of 50MW power from Jojobera TPP of TISCO and 100MW power from Jindal (Torangulu). Referring to the minutes of meeting held on 13th March 2006,



Counsel further submitted that, BEST has represented that demand will be met to the extent of the likely shortfall in the coming monsoon months leaving a gap of about 100-150MW to be bridged.

4. Relying on the discussions and the decisions that have taken place in the aforesaid meeting held on 13th March 2006, it is the contention of the Petitioners that the load regulation measures stipulated by the Commission in its Order dated 25th February 2006 is unwarranted and should not be given effect to, since, in the view of the Petitioners, enough power supply is available as can be clearly seen from the minutes of meeting held on 13th March 2006. Counsel submitted that, TPC has unlimited power supply and is capable of meeting additional demand. He submitted that there is no fact brought on record to indicate that TPC is unable to give unlimited supply to BEST as per the prevailing agreement executed between them and consequently, whatever BEST requires, TPC is bound to supply and that BEST will purchase it. He further submitted that, considering the said discussions and decisions, the apprehension that Mumbai will be facing major power supply shortage is unwarranted, and consequently, the load regulation measures stipulated in the Order dated 2nd February 2006 should not be given effect to. The Petitioners have submitted that, the fact that enough power supply is available as seen from the discussions and decisions that have taken place in the aforesaid meeting held on 13th March 2006, could not have been and indeed has not been brought to the notice of the Commission while passing the said Order dated 25th February, 2006.

5. Advancing further contentions, the Petitioners have submitted that the facts borne out of the meeting held on 13th March 2006 in regard to additional power being made available to the city of Mumbai, could not have been produced at the time when the Order dated 25th February 2006 was passed. Therefore, on this ground, the load regulation measures stipulated in the said Order dated 25th February 2006 necessitates a review and consequently, levy of penal charges stipulated in the form of Load Management Charge (LMC) requires to be withdrawn, as there is no ground available or subsisting for it to be given effect. In support of his contentions, Counsel submitted that a review is maintainable in accordance with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 and that the Commission has the powers to grant the review sought for. Counsel further submitted that, the review petition is limited to imposition of LMC only and if the review petition is granted, then the Petitioners will expand on the issues involved in the other prayers sought by the Petitioners viz., (i) withdrawal of proposal of power cut, load shedding for the whole of Mumbai; (ii) restriction on consumption to be limited to 5%; (iii) levy of additional higher tariff only for additional supply of power by distribution companies at higher charges, if any; (iv) LMC not to be linked with 20% reduction.

6. During the hearing held on 19th April 2006, it was clarified to the Petitioners that the Review Petition could not be heard alongwith two other Petitions filed by the Petitioners numbered as Case No. 66 of 2005 and Case No. 67 of 2005, as sought for by the Petitioners, since LMC purely being a tariff issue, is not a subject matter of the said other two cases. It was also clarified to the Petitioners that, as per law, the Petitioners herein may present to the Appellate Tribunal for Electricity the case on which they have applied for review, to the extent the grounds of preferring the review petition are common to BEST who has preferred an appeal to the Appellate Tribunal from the Order dated 25th February 2006 and the detailed Order dated 9th March 2005 in Case No. 4 of 2004.

7. The Commission has considered the submissions made by the Petitioners. On the issue of levy of LMC as sought to be reviewed and consequently sought to be withdrawn by the Petitioners, it is to be noted that, subsequent to the Order dated 25th February 2006, a



detailed Order has been passed by the Commission on 9th March 2006, wherein the Commission has held as under:

“Subsequent to the issue of the Operative Order (dated February 25, 2006), the Commission held a Public Hearing in respect of Case No. 46 of 2005 in the matter of Strategy to bridge the demand-supply gap in the city of Mumbai, on February 27, 2006 at Mumbai in Centrum Hall, First Floor, World Trade Centre at 11:00 hours. During the Public Hearing, several suggestions were received that the reduction in monthly consumption should be in comparison to the corresponding month in the previous year instead of the average consumption in the last year. There were also suggestions that certain category of consumers should be exempted from the levy of penal tariff. Taking into account these suggestions of the public during the course of the Public Hearing, the Operative Order in Case No. 4 of 2004 (dated February 25, 2006) stands amended forthwith on these following aspects mentioned in points (i) to (ix).

(i) All the residential and commercial consumers consuming more than 300 units per month henceforth, and all industrial consumers (irrespective of their level of consumption) in the BEST License area will have to reduce their monthly consumption to a level of 80% of their consumption in the corresponding month in the past year (January 2005 to December 2005). Penal tariff termed as “Load Management Charge” shall be applicable for the consumption exceeding the 80% limit at the rate of additional 100% of the highest tariff chargeable to the respective category, and will be charged in the energy bill of the consumer in that month.

(ii) The money collected through the levy of this penal tariff termed as “Load Management Charge” has to be maintained in a separate fund to be used for energy conservation and Demand Side Management (DSM) measures.

(iii) Any reduction in the monthly consumption below the 80% limit prescribed on a consumption in the corresponding month in the past year (January 2005 to December 2005) will be incentivised with a rebate termed as “Load Management Rebate” at the rate of 50% of the normal chargeable rate to the kWh units in the tariff slab applicable to the reduction in the number of units, vis-à-vis the benchmark consumption of 80% of the consumption in the corresponding month of the previous years, by adjusting the bill accordingly. This would be funded by the fund mentioned in paragraph ‘ii’ above, calculated in the energy bill of the consumer for that month.

(iv) In case of residential and commercial consumers having consumption greater than 300 units per month henceforth, and all LT/ HT industrial and HT commercial consumers who have already reduced their consumption in the corresponding months in the last year due to the introduction of the Load Management Charge/Rebate, i.e., for consumers who have been given Load Management Rebate last year, the load management target will be at the same level as that of the corresponding month last year, and further reduction to 80% of the consumption in the previous year is not mandatory in such cases.

(v) This monthly consumption reduction target will not be applicable for new consumers and in case of change in occupancy during the last one year for the existing consumers.



(vi) As regards the essential services, it is desirable that they should also try to reduce their monthly consumption, however, in case of failure to reduce the consumption to a level of 80% of their consumption in the corresponding month in the past year (January 2005 to December 2005), penal tariff in the form of levy of "Load Management Charge" as well as incentive of "Load Management Rebate" will not be applicable for the operational installations of following essential services:

- a. Railways
- b. Water Supply and Sewerage systems operated by Government/local authorities
- c. Telephone exchanges
- d. Defence Establishments
- e. Ports and Harbours
- f. Meteorological observatories
- g. Hospitals
- h. News Agencies
- i. TV and Radio Stations
- j. Posts & Telegraphs
- k. Airports
- l. Atomic energy establishments

(vii) In case of the above essential services, the restriction of reducing the monthly consumption to 80% of their consumption in the corresponding month of the past year will however, be applicable for the attached residential colonies and the "Load Management Charge/ Rebate shall be applicable as mentioned in paragraphs '(i)' to '(v)' above (viii) The Commission directs BEST to install electronic meters capable of measuring maximum demand and ToD consumption for its consumers in categories LF-2, LTP-1, LTP-2, LTC-1 with sanctioned load equal to or above 20 kW or using more than 3,000 kWh/month and to all consumers in HT category in a time bound manner so that the ToD tariffs and demand charges on kVA basis can be introduced for these consumer categories in the next Tariff Determination exercise for FY 2006-07.

(ix) In case the consumption of 'BPL' category consumers exceeds 30 units in any month, then such consumers will thereafter be automatically considered under 'residential' category LF-1, and will be charged accordingly."

8. The Commission finds it relevant to mention that Dr. Somaiya, the first Petitioner herein, had sought a review of the Commission's Order dated 2nd March 2006 in Case No. 46 of 2005, and consequently sought withdrawal / modification of the option specified by the Commission in the said Order to effect reduction in demand by mandatory load regulation measures in the license areas of TPC, REL and BEST for meeting the demand-supply gap. The Petitioner therein had also sought review on the ground that the discussions and the decisions that have taken place in the aforesaid meeting held on 13th March 2006 necessitates a review of the said Order dated 2nd March 2006 which stipulated load regulation measures, thereby implying that events happening subsequent to passing of orders can be a ground for review of orders passed. On maintainability, the said review petition, being Case No. 66 of 2005, had been rejected vide Order dated 16th May 2006 while at the same time it was stipulated therein that the Commission will, however, reassess the prevailing situation periodically and the need to continue load regulation measures in future, depending upon the impact of the load regulation measures, and/or availability of additional supply and transmission corridor, with provision of such reassessment reports made available on the Commission's website.



9. In the present review petition, the Petitioners have sought the review and consequent withdrawal of (i) levy of LMC, (ii) power cut, load shedding for the whole of Mumbai; (iii) restriction on consumption; (iv) levy of additional higher tariff (subject only for additional supply of power by distribution companies at higher charges, if any); (v) LMC linked with 20% reduction. As far as these issues are sought to be reviewed by the present petition and consequently sought to be withdrawn by the Petitioners on the ground that the discussions and the decisions that have taken place in the aforesaid meeting held on 13th March 2006 necessitates a review of the Order dated 25th February 2006, the Commission is of the view that, the event brought about by the Petitioners, are events that occurred subsequent to the passing of the said Order. In law, a review is allowed only on a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person aggrieved by the order or could not be produced by him at the time when the direction or order was passed. Apprising the Commission of the meeting held on 13th March 2006 and the discussions held therein, is not the discovery of new and important matter or evidence which, was not within the Petitioners' knowledge or could not be produced by him at the time of hearing of Case No. 4 of 2004. These are certain events that have taken place after the passing of the said Order. However, events happening subsequent to passing of orders cannot be a ground for review of orders passed, or else all orders passed by various courts would be subject to review since there are many events which are likely to happen subsequent to passing of orders. On this basis alone, the review petition is not maintainable since no grounds for review are made.

10. The submissions made by the Petitioners, during the hearing, on the scope of powers of the Commission to stipulate the levy of LMC in the Order dated 25th February 2006, cannot be a ground for review. The scope of review does not permit rehearing of the matter and/or passing a fresh decision on the case. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise". Secondly, the issue relating to the scope of powers of the Commission to stipulate the levy of LMC, being pending before the Appellate Tribunal on an appeal preferred by BEST from Orders dated 25th February 2006 and 9th March 2005, the law does not entitle the Commission to grant a review on these aspects.

11. In view of the aforesaid observations, the Commission is unable to sustain the contentions of the Petitioners. The maintainability of the review petition has to be tested against the requirements and criteria set out in Regulation 85(a) of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004. The scope of review is, accordingly, limited. None of the grounds stated in the petition can be said to fall within the ambit and scope of Regulation 85. The Commission therefore rejects the Petition, with the above observations, since the grounds sought for by the Petitioner are not within the purview of review under the said Regulation 85(a) and consequently, the review petition is not maintainable since no grounds for review are made.

12. In view of the foregoing, the amendment application filed by the Petitioners is rejected.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



(Malini Shankar)
Secretary, MERC