

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY  
COMMISSION**

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**Case No. 67 of 2005**

**In the matter of**

**Petition filed by Dr. Kirit Somaiya and Shri. Sardar Tarasingh seeking review of  
Commission's Order dated 10<sup>th</sup> January 2006 in Case No. 35 of 2005  
(reg. Revision in the Principles & Protocol for load shedding by MSEDCL).**

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

**ORDER**

**Dated: August 11, 2006.**

Dr. Kirit Somaiya (Ex-Member of Parliament) and Shri. Sardar Tarasingh (Member of the Legislative Assembly) in the capacity of socio-political and consumer activists and office bearers of the Bharatiya Janata Party, had filed a joint petition on 23<sup>rd</sup> March 2006 seeking *inter alia*, review of the Order of the Commission dated 10<sup>th</sup> January, 2006 in Case No. 35 of 2005. Subsequently, on 18<sup>th</sup> April 2006, the Petitioners filed an application seeking condonation of a delay of approx. forty-three days in filing the Review Petition. The Commission has condoned the delay in filing of the present petition.

2. The Petitioners have submitted that there is a need for the Commission to review the said Order dated 10<sup>th</sup> January 2006 on the ground that subsequent to the issuance of the said Order and Clarificatory and Corrigendum Orders there under dated 13<sup>th</sup> January, 2006 and 21<sup>st</sup> February 2006, the Government of India ("GoI") took a decision that additional supply be made available for Mumbai to avoid load shedding. The said decision was conveyed on 13<sup>th</sup> March, 2006 during a joint meeting between Ministry of Energy, GOI, Ministry of Energy, Government of Maharashtra, and all power supply companies of Mumbai, i.e., Brihanmumbai Electricity and Supply Undertaking ("BEST"), Reliance Energy Limited ("REL") and Tata Power Company Limited ("TPC") alongwith Maharashtra State Electricity Distribution Company Limited ("MSEDCL"). Relying on the discussions and the decisions that have taken place in the aforesaid meeting held on 13<sup>th</sup> March 2006, it is the contention of the Petitioners that the principles and protocol for load shedding as stipulated by the Commission in its Order dated 10<sup>th</sup> January, 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 13<sup>th</sup> March, 2006.

3. During the admissibility hearing held in the matter on 29<sup>th</sup> June 2006, the following was pointed out by the Petitioners:



- (i) in view of the developments in the meeting held on 13<sup>th</sup> March, 2006 in relation to supply of additional power, the principles and protocol for load shedding to be observed by MSEDCL need not be required to be carried out in Mulund, Bhandup and Kanjurmarg, being areas within the geographical limits of Mumbai and MSEDCL's territory of supply, since, the ongoing demand-supply gap in the city of Mumbai may be mitigated on acceptance of the proposal forwarded by the Union Minister of Power;
- (ii) the Petitioners would like to intervene in the matter for ensuring that MSEDCL takes requisite steps of approaching the GOI and the Commission for availing additional power, if not done so;
- (iii) referring to the following portion of the Order dated 10<sup>th</sup> January 2006, which read thus "...in view of the prevailing shortage of electricity in the State of Maharashtra, on 16th June 2005. The Commission issued the detailed Order in the matter on 3rd August 2005", the Petitioners have contended that the directions that the Commission has given under the said Order are pursuant to the observations, data, information regarding the circumstances governing the demand and supply of power, that were available with the Commission as on 16<sup>th</sup> June, 2005 which has undergone major change since 16<sup>th</sup> June, 2005 particularly in light of the assurances for supply of additional power to Mumbai, as is clear from the above-mentioned meeting held on 13<sup>th</sup> March, 2006.

Advancing further contentions, the Petitioners have submitted that the facts borne out of the meeting held on 13<sup>th</sup> 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 10<sup>th</sup> January, 2006 was passed. Therefore, on this ground, the principles and protocol for load shedding as stipulated by the Commission in its Order dated 10<sup>th</sup> January, 2006 necessitates a review and consequently, Mulund, Bhandup and Kanjurmarg area should be exempted from load shedding since rest of Mumbai is not subjected to load shedding, and these areas are an integral part of Mumbai city.

4. Smt. Deepa Chawan, Counsel for MSEDCL referred to paragraph 14(i) of the said Order dated 10<sup>th</sup> January 2006, which reads thus "*Mulund, Bhandup and Kanjurmarg area should be exempted from load shedding since rest of Mumbai is not subjected to load shedding, and these areas are an integral part of Mumbai city.*" Thereafter, she referred to paragraph 15 (f) which reads thus "*15. The Commission's views on the wide range of comments and suggestions received during the public process are detailed below:*

.....  
f) *The areas of Mulund, Bhandup and Kanjurmarg, though in the jurisdiction of Brihanmumbai Municipal Corporation (BMC) for municipal administration, fall within the distribution license area of MSEDCL and are hence, subject to the same dispensation applicable for other similarly placed consumers in MSEDCL license area.*" She submitted that, therefore, as per the aforesaid provisions of the Order dated 10<sup>th</sup> January 2006, the issue governing power supply to "*Mulund, Bhandup and Kanjurmarg*" has already been considered by the Commission and have been decided upon accordingly.

5. The Commission observes that the Petitioners have sought a review of its Order dated 10<sup>th</sup> January 2006 on the grounds that certain events have taken place after the passing of the said Order necessitating its review. The grounds relied upon by the Petitioners in the present matter are identical to the grounds relied upon in Case No. 66 of 2005, which has been



dismissed by the Commission by its Order dated 16<sup>th</sup> May, 2006. The Commission observes that 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. 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. In the present case, the events brought about by the Petitioner in his Review Petition are not the discovery of new and important matter or evidence which, was not within his knowledge or could be produced by him at the time of hearing held culminating into the Order dated 10<sup>th</sup> January, 2006 and are events that occurred subsequent to the passing of the said Order. On this ground alone, the Petition is liable to be dismissed.

6. Further, the Order dated 10<sup>th</sup> January 2006, from which a review has been sought by the Petitioners herein deals only with MSEDCL's Proposal for modification of the principles and protocol for load shedding by MSEDCL. The Commission has held at paragraph 15 of its Order dated 10<sup>th</sup> January 2006, as under:

*“d) While the Commission has not stipulated the total duration of the load shedding based on the principles in the protocol, the Commission does not regulate the exact timing of load shedding during the day/night in each area/for each consumer category. This is a matter of detailed planning and implementation by MSEDCL, based on the demand-supply availability and the specific pre-announced schedules. The Commission only determines the principles and protocol to be followed in designing the load shedding plan.*

*..*  
*f) The areas of Mulund, Bhandup and Kanjurmarg, though in the jurisdiction of Brihanmumbai Municipal Corporation (BMC) for municipal administration, fall within the distribution license area of MSEDCL and are hence, subject to the same dispensation applicable for other similarly placed consumers in MSEDCL license area.”*

In the light of the above, it will not be in the ambit of the Commission to provide any such relief as sought by the Petitioners to exempt the areas of Mulund, Bhandup and Kanjurmarg under a Review Petition. 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”.

7 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 Petitioners 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.

Accordingly, the Commission dismisses the present Petition with the aforesaid observations.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr Pramod Deo)  
Chairman



(Malini Shankar)  
Secretary, MERC