

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 35 of 2005

In the matter of
Complaint filed by Maharashtra Rajya Irrigation Federation under Section 142 of
Electricity Act, 2003 for violation of Load Shedding Protocol by MSEDCL

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

ORDER

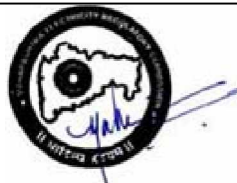
Dated: 13th April, 2007

A complaint has been filed by Maharashtra Rajya Irrigation Federation before the Commission on January 5, 2007 under Section 142 of the Electricity Act, 2003 (“EA 2003”). Complainants have alleged that Maharashtra State Electricity Distribution Company Limited (“MSEDCL”) have contravened the principles and protocol stipulated by the Commission under various orders by undertaking and effecting repeated incidences of load shedding in excess of 12 hours in several areas in its area of supply. It has been contended that the Commission had issued directions to MSEDCL regarding principles to be followed for effecting load shedding for agricultural pump holders and industrial, household and commercial categories. It has been pointed out that in the Order dated January 10, 2006 in Case No. 35 of 2005, the Commission had stipulated revision in the principles and protocol for load shedding by MSEDCL and grouped regions as A, B, C, D. The maximum hours of load shedding for urban and industrial agglomerations, other regions, agriculture dominated regions and anticipated load relief in evening peak hours, for each of these A, B, C, D groups, were stipulated. As against the hours stipulated for load shedding in agriculture dominated regions, MSEDCL has effected load shedding far exceeding the thresholds, i.e., to say, for Group A, MSEDCL has undertaken load shedding for sixteen hours as against eleven hours as stipulated by the Commission. Similarly, for Group B, load shedding has been effected for fourteen hours as against eleven and half hours stipulated by the Commission. However, for Groups C and D, as against twelve hours stipulated by the Commission, MSEDCL has undertaken load shedding for eleven hours. It has been prayed that the Commission should direct MSEDCL to adhere to the load shedding protocol as approved by the Commission. It has further been prayed that the Commission should issue appropriate directions to MSEDCL to provide adequate energy supply to co-operative organisations



that provide water supply to agricultural consumers for the purposes of irrigation. It has been further complained that in certain areas within the area of supply of MSEDCL, industrial consumers, unlike agricultural consumers, are not subjected to any load shedding and they enjoy energy supply for twenty four hours for six days a week, and sometimes even for the whole week. Complainants have submitted that supply of energy in the agricultural sector is as crucial as in the industrial sector. The production of food grains, sugarcane, etc, are no less essential as compared to items of industrial production. It has been submitted that the agricultural consumers of Maharashtra are suffering huge losses as they are being subjected to extra hours of load shedding, over and above the approved load shedding protocol stipulated by the Commission. Complainants have argued that the penal provisions under Section 142 of EA, 2003 be invoked against MSEDCL who are fully responsible for violating the aforesaid protocol and for subjecting its agricultural consumers to heavy losses. Complainants have sought imposition of penalty on the errant officials of MSEDCL. MSEDCL submitted its reply on February 21, 2007.

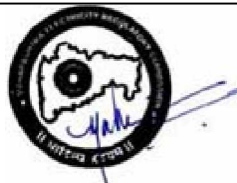
2. An admissibility hearing was held on March 7, 2007. Shri. Ashok P. Kinikar appeared for the Complainants. Smt. Deepa Chawan, Counsel, and Shri. A.D. Palamwar appeared for MSEDCL. Dr. Ashok Pendse appeared for Mumbai Grahak Panchayat. At the hearing, the Complainants reiterated their submissions made in the complaint and further submitted that MSEDCL has been implementing load shedding for fourteen hours in Bhagirath and Akshaya Prakash Yojana regions. Complainants submitted that they were not certain as to whether prior permission of the Commission was obtained by MSEDCL in this regard, and whether MSEDCL has obtained approval of the Commission for connecting with the Central Grid, and undertake under-frequency relay (UFR) operate at 48.8 Hz. Complainants also submitted that they were not aware as to whether MSEDCL's practice of effecting EHV openings over and above the planned load shedding hours has been accorded prior approval by the Commission, and for which no due compensation is being paid by MSEDCL to consumers who are adversely affected by the same. It has been submitted that it is the right of agricultural consumers to know which area is actually being fed/supplied with electricity while at the same time load shedding, over and above the protocol, is implemented upon them. It is further submitted that it is the right of such consumers to be compensated for their being subjected to load shedding over and above the specified protocol. It has been argued that MSEDCL should be required to explain in detail how it implements "zero load shedding" in certain areas, and what are the consequences thereof. It was submitted that it was a matter of concern that supply was not restricted in areas where commercial losses are more. Complainants have submitted that in Latur District and in Beed District, commercial losses are to the extent of nearly 65%. It has also been contended that MSEDCL has subjected agricultural consumers to indiscriminate load shedding. Complainants have sought that errant officials of MSEDCL who are responsible for high distribution losses should be dis-incentivised through appropriate measures. It has also been submitted that, supply to consumers, in agriculture dominated regions, connected on single phase has been increased by six hours while at the same time consumers connected on triple phase have been subjected to additional load shedding of two hours. Such consumers who are



connected on triple phase have suffered due to the same. The Commission should take necessary action against MSEDCL for the non-compliance and contravention as aforesaid. The Commission should direct MSEDCL to submit before the Commission the data which records how MSEDCL has supplied electricity and/or complied with the load shedding protocol in the preceding four months, with respect to agricultural consumers of MSEDCL.

3. Dr. Ashok Pendse of Mumbai Grahak Panchayat, one of the consumer representative organisations authorised by the Commission to represent the interests of consumers before it, submitted that it was required of MSEDCL, in terms of the Hon'ble Supreme Court's judgement dated May 13, 2005 in SLP (Civil) No(s). 11437-11438/2005 in the case of *Maharashtra State Electricity Board & Ors vs. Anil & Ors*, to consult the Commission prior to deviating from the load shedding protocol. It has been submitted that power requirement increases during events such as election campaigns, which is the most likely reason for areas such as Kolhapur to sustain load shedding over and above the specified protocol. Dr. Pendse further submitted that until recently, certain zonal offices of MSEDCL (especially that of Thane and Kolhapur) had issued Circulars to introduce a "second day of load shedding" for industrial consumers located in the said zones. The said Circulars were, however, withdrawn under the Chief Minister's intervention. Dr. Pendse submitted that MSEDCL had no authority to issue such Circulars without obtaining prior permission of the Commission. MSEDCL should be directed to give wide publicity of the revised load shedding protocol, for the ensuing eight days, on a weekly basis, preferably on every Monday (either through newspaper publication or through any other form of media). Any deviation from the implementation pattern should be explained and justified in the following weekly notice. This practice would ensure dissemination of full information to consumers regarding adherence to load shedding protocol and the daily duration of load shedding. The consumers would then be able to plan their activities accordingly.

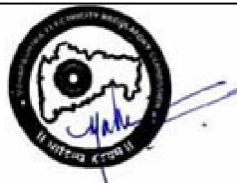
4. Smt. Deepa Chawan, Counsel for MSEDCL, tendered an unconditional apology for the deviation by MSEDCL from the existing load shedding protocol. Referring to the unprecedented demand~supply gap in the State of Maharashtra that has increased post issuance of the load shedding protocol, it was submitted that MSEDCL was compelled to implement drastic emergency load shedding measures. Counsel submitted that since December 2006, there has been an unprecedented increase in the demand~supply gap in the State of Maharashtra. Counsel submitted that MSEDCL was therefore constrained, although occasionally, to resort to extended load shedding. However, this extended load shedding has not been effected with any malafide intention and has also not been done with any deliberate or willful intention that would be culpable in terms of Section 142 of the EA, 2003. Counsel argued that action under Section 142 of the EA, 2003 can only be taken when it is sufficiently proved that non-compliance of directions were caused deliberately and willfully and the same qualifies as contemptuous conduct. In support of her contentions, Counsel has referred to judgments passed by the Supreme Court in *JK Parekh Vs. S. Chakraborty*, (1990) 4 SCC 737, *AR Sarkar & Ors Vs. H. Ghosh & Ors*,



2002 (4) SCC 21, *DS Poonia Vs. YD Singh & Anr with WS Singh Vs. YD Singh & Anr*, 2003(3) SCC 513.

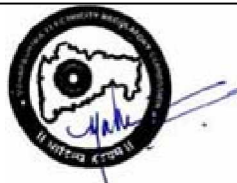
5. During the course of hearing, the Commission enquired of MSEDCL as to whether MSEDCL has unilaterally introduced and implemented enhanced load shedding in areas covered under the Bhagirath and other single phase schemes. The Commission further enquired as to what prevented MSEDCL from approaching the Commission to seek appropriate directions to deal with the increase in demand~supply gap after the existing load shedding protocol was issued. The Commission asked MSEDCL to explain that while MSEDCL had identified increase in the demand~supply gap in the month of December 2006, what action was taken by it to tackle the same? The Commission observed that MSEDCL should have taken expeditious measures considering such exigent situations. The Commission asked MSEDCL to explain the position as to whether MSEDCL has started complying with the revised load shedding protocol issued vide Order dated February 20, 2007 in Case No. 78 of 2006. The Commission observed that under-frequency operations are not justified in the absence of any declared emergency situation. In response to queries raised by the Commission, Shri. A.D. Palamwar, submitted a copy of an internal order dated March 5, 2007 issued by the CE (Load Management), MSEDCL. He submitted that the said internal order stipulates the appointment of a “District Committee” and a “Taluka Committee” in terms of the Order of the Commission dated February 20, 2007 in Case No. 78 of 2006. Shri. Palamwar submitted that the Gaothan Feeder Separation Scheme has been introduced by MSEDCL with the objective of providing supply to all villages connected on single phase and to restrict agricultural usage of power for consumers connected on triple phase. The said scheme was implemented only after a meeting was held amongst the Managing Director and the Executive Director of MSEDCL with the Chief Minister of Maharashtra. In the said meeting, the implementation of the Single Phasing Scheme, the Akshaya Prakash Scheme and the Gaothan Feeder Separation Scheme was ratified. The Single Phasing Scheme ensures eighteen hours supply (i.e., providing six hours of additional supply per day) while implementing fourteen hours of load shedding on agricultural consumers connected on triple phase.

6. Having heard the parties and after considering the material placed on record, the Commission is of the view that, although defensive contentions have been advanced on behalf of MSEDCL, the fact remains that the indisciplined nature of MSEDCL with regard to load shedding, is becoming repetitive. The Commission rejects the argument that MSEDCL was compelled to implement additional load shedding beyond the ceiling stipulated by the Commission due to prevailing circumstances endangering the system safety and security or that additional load shedding is justified in order to secure grid safety. Under the Grid Code, grid security measures like under frequency relay operation, EHV opening, etc., have to be undertaken during grid emergency situation, however, such actions are not justified as routine system operation to manage demand-supply gap and as a routine affair. The Commission completely rejects the contentions advanced by the Counsel for MSEDCL that as there were no “malafide intention” in violating directions of the Commission, MSEDCL may not invite the penal provisions of EA, 2003



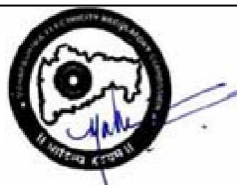
or action under Section 142 can only be taken when it is sufficiently proved that contravention of directions were deliberate, willful and qualifies as contemptuous conduct. The use of the words “dishonestly”, “maliciously”, “negligently”, “with intent to”, in the Sections preceding Section 142 under Part XIV (Offences and Penalties) of EA 2003 and absence of the same in Section 142, clearly manifests the intention of the Legislature in the construction of Section 142. It is, therefore, that any inference based on judgements referred to by Counsel, to the effect that that willfulness or malafide intention is the *sine qua non* for attracting penalty under Section 142, is not tenable. The judgements referred to by Counsel, which are in the context of other legislations, are of no avail in the present matter. It is well settled that bonafide intention can be inferred from due compliance or implementation of an order or direction and malafide intention is inferred from non-compliance thereof. The Commission also does not agree with the contention advanced by Counsel that the aforesaid Supreme Court’s Order dated May 13, 2005 in SLP (Civil) No(s). 11437-11438/2005 in the case of *Maharashtra State Electricity Board & Ors vs. Anil & Ors*, is to be construed in a flexible manner. Any action of undertaking load shedding in contravention of any maximum limit stipulated earlier by the Commission or EHV opening, etc., shall not be permitted as routine system operation to manage demand~supply gap. There is no ambiguity that the Commission would need to be consulted prior thereto in the terms of the aforesaid order passed by the Hon’ble Supreme Court. MSEDCL should have consulted the Commission before going beyond the limit and subjecting agricultural consumers to additional load shedding.

7. As against the contentions raised by the Complainants that necessary action is required to be taken against MSEDCL for non-compliance, the Commission will need to take into consideration the circumstances that prevailed as a result of which MSEDCL has gone beyond the maximum limit stipulated by the Commission. It is an admitted position that the demand projection has not been well off the mark but there has been an excessive shortfall in supply for procurement by MSEDCL, resulting in wide ranging increase in the demand~supply gap. However, MSEDCL should have been able to firstly, envisage such an incidence as a worst case scenario, and, secondly, plan and initiate timely action in discharge of its obligation to supply within the constrained position. This should have been further ratified by the Commission under its load shedding protocol. Due to these circumstances, MSEDCL has submitted a separate Petition on February 8, 2007 before the Commission seeking permission to revise its load shedding programme. It has been explained therein that there is an unprecedented increase in demand in peak hours and the shortfall has increased due to no corresponding increase in availability. In its reply to the present complaint, MSEDCL has stated that, it has faced a huge shortfall of 5700 MW in morning peak and 4892 MW in evening peak during February 2007, shortfall of 5686 MW in morning peak and 4385 MW in evening peak during January 2007, shortfall of 4493 MW in morning peak and 3912 MW in evening peak during December 2006, shortfall of 4847 MW in morning peak and 3774 MW in evening peak during November 2006, and shortfall of 3606 MW in morning peak and 3414 MW in evening peak during October 2006. It has been stated that due to such huge shortfall, MSEDCL is not in a position to adhere to the principles and protocols of load shedding approved by the Commission under its Order dated January 10, 2006 and



therefore, had to resort to additional load shedding as an emergency measure. The shortfall, as aforesaid, has occurred due to — (i) reduction in availability of power on account of forced outages of its generating plants (Koradi, Chandrapur, Parli, Bhusawal, NTPC- Vindhyachal, TPC-Trombay, RGPPL, Koyna) resulting into shortage of about 10 MUs of energy per day; (ii) synchronisation of Northern Grid with National / Central Grid on 26th August 2006 and overdrawal of available power from Eastern region (to Western region) by North-Indian States. The shortfall has also forced MSEDCL to effect un-scheduled and uncontrolled EHV opening / UFR tripping. MSEDCL also had to take into account directions issued by SLDC under Section 33(1) of the EA 2003 to undertake increase in load shedding in view of such shortage of power.

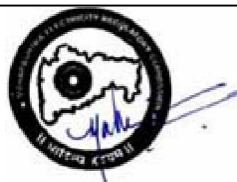
8. As for the implementation by MSEDCL of adhoc modification to the load shedding protocol even before obtaining the Commission's approval for the same, citing emergency situation at Nagpur and other places, the Commission held an emergency hearing at short notice and issued its Order in the matter of Case No. 78 of 2006 on February 20, 2007. In the said Order, the Commission held that notwithstanding the fact that the current situation could have been mitigated to a large extent, with proper planning and capacity addition over the last ten years, the fact remains that the demand~supply gap has increased, which has to be apportioned across different categories and regions in an equitable manner. Hence, the Commission stated in the said Order that it is constrained to permit increase in load shedding beyond the earlier stipulated ceiling of 12 hours. The Commission has had to consider a higher level of load shedding than that proposed by MSEDCL in its proposal that was discussed during the Public Hearing, in view of the simulations submitted by MSEDCL on the desired load relief. The ratio for apportionment of the load shedding requirement between urban and industrial conglomerations, other regions, and agriculture dominated regions has been modified from 1:1.5:3.5, to 1:1.4:2.8. The Commission has considered additional load shedding of two hours, two hours and three hours, respectively, to urban and industrial agglomerations, other regions and agricultural dominated regions. As and when the requirement of load shedding reduces, due to additional availability of supply and/or reduction in demand, the divisions classified under A, B, C and D will get the relief in that sequence, and agriculture dominated regions will get relief first, then other regions, and finally urban and industrial conglomerations will get relief. In the said Order, MSEDCL is required to constitute local committees involving prominent local citizens to ensure proper implementation of the protocol at the sub-divisional level and monitoring of the protocol at the feeder level, and display the prevalent load shedding protocol and schedule for each feeder, prominently at each sub-station, accompanied by adequate publicity in the local newspapers. MSEDCL's vigilance squad is required to monitor and report instances of deviation from load shedding schedule, directly to the Commission. MSEDCL has been directed to expeditiously undertake the agricultural feeder separation programme. If these schemes are implemented as per schedule, coupled with the increased supply availability projected by MSEDCL, the hours of load shedding can be brought down further. Various options have been suggested therein such as the Pune model for utilising the surplus captive generation capacity should be explored in other regions where industry has surplus captive capacity, in order to mitigate the situation.



Alternative models such as distributed generation based distribution franchisee could also be considered, especially for urban and industrial agglomerations, which may not have surplus captive generation like Pune urban circle. MSEDCL is required to pass on the impact of reduction in cost of power purchase through lower/negative Incremental ASC and FAC, for costly and non-costly power purchase, respectively. The said Order is available on the Commission's website (www.mercindia.org.in).

9. During the hearing in the present matter, MSEDCL were asked to explain the steps that are being taken to implement the aforesaid Order dated February 20, 2007, more particularly, the compliance of the direction to bring transparency in operationalising the load shedding protocol, in Case No. 78 of 2006. Shri. Palamwar submitted a copy of an internal order ref. no. CE/LM/LS/7359 dated March 5, 2007 whereby, under the CE (Load Management), local committees at District level comprising of Collector, Superintendent of Police / Police Commissioner, Chief Executive Officer – Zilla Parishads, MSEDCL's Superintending Engineers of O&M circles, and at Taluka level comprising of Tehsildar, Police Inspector, B.D.O, MSEDCL's Dy. Engineer, have been constituted. These committees have been constituted to effectively monitor the load shedding protocol for respective areas and to ensure that no deviation in the same is allowed. It has been stipulated therein that strict action will be taken against errant officers.

10. Though the cause of action in the present complaint relates to the period prior to the proceedings in Case No. 78 of 2006, the Commission is of the view that it would need to take into account the circumstances governing increase in deficit of about 5500 MW attributable to the excessive shortfall in availability, availability of power from costly sources, the demand-supply gap, apportionment thereof across different categories, and other factors, which the Commission has considered while permitting increase in load shedding beyond the earlier stipulated ceiling of 12 hours, in its Order dated February 20, 2007. The Commission is required to take "*measures conducive to development of electricity industry*" to meet the objectives of EA, 2003. From the submissions made by MSEDCL as also considering the aforesaid internal order dated March 5, 2007, the Commission is of the view that steps are being taken by MSEDCL to comply with the Order dated February 20, 2007. The said internal order should address and take care of the main concerns of the Complainants. As for the claim of compensation for being subjected to additional load shedding, the provisions of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2005 do not stipulate compensation in such cases. As regards the prayer to issue directions to MSEDCL to provide adequate supply to co-operative organisations that provide water supply to agricultural consumers for the purposes of irrigation, the same is beyond the purview of the present complaint and hence not dealt with herein. The Commission has taken a serious view of MSEDCL's practice of causing and/or effecting EHV openings over and above the planned load shedding hours as a routine affair. While, the Commission is of the view that, taking a strict construction of Section 142 to order penalty in this case may not serve any purpose. Under Section 142, the Commission can order monetary penalty.



11. Considering the facts of the case and the circumstances, the Commission is of the view that imposing monetary penalty under Section 142 for contravention of Orders of the Commission in this case, will not alleviate the immense misery caused to all the affected consumers of MSEDCL and directs MSEDCL to strictly follow the protocol in force.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



(Smt. Malini Shankar)
Secretary, MERC