

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 9 of 2005**

**In the matter of**  
**Review of Orders dated 26.4.2005 and 4.5.2005 in Case No. 4 of 2005**  
**concerning directions to licensees under Section 23 of EA, 2003.**

**Dr. Pramod Deo, Chairman**  
**Shri A. Velayutham, Member**

**ORDER**

**Dated: 6<sup>th</sup> July, 2005**

In its Petition dated 27<sup>th</sup> May, 2005, with the Maharashtra State Electricity Board (MSEB) as Respondent, the Mumbai Hoarding Owners' Association (MHOA), Mumbai has sought a review of the Commission's Order dated 26<sup>th</sup> April, 2005 in Case No. 4 of 2005 insofar as it restricts the use of electricity for illumination of hoardings by its members, with the following prayers:

- "(a) that the Commission be pleased to allow the Review Petition against the Order dated 26<sup>th</sup> April, 2005 passed by the Commission in Case No. 4 of 2005;*
- (b) that the Commission be pleased to set aside the Order dated 26<sup>th</sup> April, 2005 passed by the Commission in Case No. 4 of 2005.*
- (c) that pending the hearing and final disposal of the Review Petition, operation of the Order dated 26<sup>th</sup> April, 2005 passed in Case No. 4 of 2005 be stayed;*
- (d) for ad-interim reliefs in terms of prayer (c) above."*

2. The Petition recalls that the Commission, in its Order dated 26<sup>th</sup> April, 2005, had inter-alia, directed MSEB and other distribution licensees not to supply electricity for neon-signs and illumination of hoardings from 1800 hours to 2200 hours in May and June 2005. (The Order was passed on an Application from the erstwhile MSEB seeking various directions to licensees for curbing electricity demand under Section 23 of Electricity Act (EA), 2003.)

3. The Petition states that although the Order vitally affects the business of the Petitioner's members, it was passed without giving MHOA an opportunity to be heard. The Order is alleged to be arbitrary and discriminatory, and passed without application of mind.

4. While referring to the power shortage in other parts of the State necessitating load shedding by MSEB, the Petition states that the areas in Mumbai served by Tata Power Company (TPC) and Reliance Energy Ltd. (REL) have adequate power, and has cited an advertisement issued by MSEB which carries a statement made by the Minister of Energy, Government of Maharashtra. Further, following the Commission's Order, the Chairman, MSEB has been reported as conceding that the directions sought by him with regard to neon-signs and illumination of hoardings was only symbolic.



5. MHOA have submitted that the Petitioner's members are the only group of consumers in Mumbai who have been singled out for imposition of restriction on the use of power. On all other categories of consumers, the Commission has levied some form of surcharge. Following the Order, the MHOA members have received notices from BEST Undertaking and REL in pursuance of the Commission's directions. On the other hand, no such restriction has been imposed on the hoardings above BEST bus shelters, which points to the arbitrary and discriminatory nature of the Order. Consumption of electricity for this purpose is much higher than that of hoardings. The Petition also sets out the manner in which the business of MHOA members is suffering as a result of the Order inspite of existing contracts, payment of fees and charges to various authorities, etc. The Petition also contends that Section 23 of EA, 2003 has no application in the circumstances of the case.

6. In its Notice for admissibility hearing, the Commission asked MHOA to serve copies of its Petition on all the distribution licensees and the four consumer representative organizations authorized by the Commission under EA, 2003. At the hearing held on 21<sup>st</sup> June, 2005, Counsel for MHOA sought a short adjournment to enable such service, and for arguing the matter. The Commission also pointed out that the Order dated 26<sup>th</sup> April, 2005 was in the nature of a summary Order and was followed by a detailed Order on 4<sup>th</sup> May, 2005, and that the latter may also be referred to by MHOA.

7. In their Reply dated 23<sup>rd</sup> June, 2005, Maharashtra State Distribution Company (MSDC) (in whom the distribution functions of the erstwhile MSEB have recently been vested) have submitted that their Application seeking certain directions to licensees under Section 23 had been heard in the presence of distribution licensees and consumer representatives before issuing Orders. The Commission has observed due process and taken into account various considerations, including technical and practical aspects, as set out in the detailed Order dated 4<sup>th</sup> May, 2005. Moreover, the directions have been given only for a limited period of time. MSEB have concluded that no ground for review has been made out in terms of Regulation 85 of the Commission's Conduct of Business Regulations and that, therefore, MHOA's Petition should not be admitted.

8. At the hearing held on 28<sup>th</sup> June, 2005 to consider admission, Shri C.D. Mehta, Counsel for MHOA stressed that the impugned Orders were passed by the Commission without giving a hearing to MHOA, even though the directions directly affected its members. The Commission observed that these directions had been given on an Application from MSEB under Section 23 of EA, 2003, which reads as follows:

*"If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.*

MHOA Counsel clarified that he was not challenging the powers of the Commission under Section 23. His primary contention was that the impugned Orders do not comply with the principles of natural justice inasmuch as a party who would be directly and adversely affected had not been heard. The Commission pointed out that it was impossible to have one crore consumers present. There was also a provision in EA, 2003 for consumer representatives to be authorized to represent consumer interest. Some of them had participated in the proceedings. In this context, the MSEB representative added that the Orders were passed after considering various aspects and holding hearings with the distribution licensees (regarding whom directions were sought) and the consumer representatives in an extreme and emergent situation, and for a very limited period of time. Smt. U.S. Salvi on behalf of BEST agreed that the Commission has wide powers under Section 23 to pass such Orders, and there is also a statutory provision for authorized consumer representatives. To that extent, she submitted that the Petition was not maintainable.



9. The Commission observed that the point was that recourse could be had by way of appeal to the appropriate forum, where a matter is not maintainable for review by the Commission. Counsel for MHOA submitted, however, that MHOA is entitled to prefer a review against the Order under Regulation 85. It was not a question of whether the period of restriction was long or short, but a matter of contractual obligations and natural justice. The Commission observed that the ambit of review under Regulation 85 was limited, and the issue of natural justice could be agitated in appeal. Review would essentially concern some error apparent, or a fact brought to light, etc.

10. MHOA Counsel reiterated some of the points raised in the Petition, viz. that there was no shortage of power as far as the distributors in Mumbai were concerned, and that such restriction had not been imposed on BEST bus shelters, which consume much more power, and quoted from the Petition and accompaniments in this regard. The Commission observed that the Order does not mention that bus shelters had been exempted. Counsel for MHOA responded that, if this was so, then BEST were violating the Commission's Orders, and appropriate action needs to be taken against them. He also circulated photographs of illuminated bus shelter hoardings in support of his contention. The Commission noted that use of own generators for such purposes had also not been barred.

11. With regard to bus shelter advertisement illuminations, the BEST representative submitted that "hoarding" as contemplated by the Commission's Order dated 26<sup>th</sup> April, 2005, and as defined in the various other relevant dispensations, means a separate structure constructed after necessary approval from the Municipal Corporation, and whose size is much larger than that of BEST's bus shelters. Therefore, the boards/ pictorial illustrations on bus shelters cannot be described as hoardings. If this were to be so, all illuminated boards and signages on shops, etc. would also have been covered. The BEST representative also pointed out that the bus shelters were provided as a facility for travelers, and accordingly required to be adequately illuminated at night for obvious reasons. Therefore, there had been no violation by BEST of the Commission's Order. Counsel for MHOA responded that the main issue was conservation of power and not technicalities such as definition of a hoarding. Such shelter lighting was likely to consume more electricity than a hoarding and should, therefore, have been included in the Order.

12. The Commission notes that Regulation 85 of its Conduct of Business Regulations, which sets out the test for review of its Order, reads as follows:

*"Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within 45 days of the date of the direction, decision, or order, as the case may be, to the Commission."*

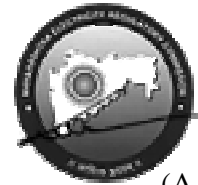
On the other hand, the Petition seeks review of the Commission's Orders dated 26<sup>th</sup> April, 2005 and 4<sup>th</sup> May, 2005 on the ground that they were passed without following the principles of natural justice inasmuch as MHOA, being a party which became affected, had not been heard, that the directions were discriminatory inasmuch as other classes of consumers were levied a charge without any restriction on use of electricity, was arbitrary and did not consider the fact of availability of power in Mumbai. These claims do not meet the parameters laid down for review, and the Petitioner is seeking a substantive modification in the direction without meeting these parameters. The Commission notes that its Orders provide the background and reasoning for the directions that have been given, and are speaking Orders. While there may be different views on the reasoning and conclusions of the Orders and the directions given, any challenge to the



directions on the basis cited would be within the domain of appeal, if at all, in the competent forum rather than by way of review before the Commission. This also applies to the claim that the principles of natural justice were not followed. The Commission cannot ascribe to itself the power of appeal which lies with another body under the law, when its review jurisdiction is circumscribed. Therefore, considering the statutory provisions and the various submissions made in these proceedings, the Commission find that the Petition does not meet the tests for review. Thus, without going further into the merits of the case, the Commission declines to admit the Petition, and disposes of it accordingly. The Commission notes, however, that the circumstances of critical power shortage in which the directions were given may recur in the future, and may necessitate further intervention. In its Orders, the licensees have also been asked to furnish data at the end of the two month period so that the impact of the directions could be assessed as an input for future measures as and when required.

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr Pramod Deo)  
Chairman



(A.M. Khan)  
Secretary, MERC