

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
13<sup>th</sup> floor, Centre No. 1, World Trade Centre, Cuffe Parade, Mumbai-400 005.  
Tel. 22163964 / 22163965, Fax No. 22163976  
E-mail: [mercindia@mercindia.com](mailto:mercindia@mercindia.com)  
Website: [www.mercindia.com](http://www.mercindia.com)

**CASE No. 2 of 2003**

**In the matter of**  
**Review of Order dated 4<sup>th</sup> March, 2005 regarding compliance of Tariff Order in respect of**  
**Load Shedding by MSEB and related issues.**

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

**ORDER**

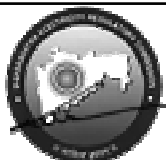
**Dated: June 28, 2005**

Under his Petition dated 22<sup>nd</sup> March, 2005 Shri Pratap Ganpatrao Hogade, President, Maharashtra Rajya Veej Grahak Sanghatana, has sought review of certain aspects of the Commission's Order dated 4<sup>th</sup> March, 2005. That Order was passed on an Application filed by him for compliance by Maharashtra State Electricity Board (MSEB) (whose distribution functions have recently been vested in the Maharashtra State Distribution Co. Ltd.) of the provisions of the Tariff Order dated 10<sup>th</sup> March, 2004 in respect of Load Shedding. Specifically, Shri Hogade has now sought that:

- (i) the provision in the Order dated 4<sup>th</sup> March, 2005 that the Single Phasing scheme proposed for supply by MSEB to agricultural consumers may be implemented beyond the limits set by the Commission provided that the State Government funds it, be removed, along with any other provisions related to it.
- (ii) Pending decision on the Petition, MSEB be restrained from implementing the scheme further with State Government funding.
- (iii) That the Sanghatana and other objectors be associated with the separate proceedings the Commission has stated in the Order would be undertaken on the principles and protocol of load shedding, demand side management and reactive power management, considering that these were the outcome of his original compliance Application.

2. In his Petition as well as oral submissions made at the hearing held on 21<sup>st</sup> April, 2005 for admission, Shri Hogade has pointed out that the Commission's Order dated 4<sup>th</sup> March, 2005 extensively analyses the single phasing scheme, and sets out its adverse features, pitfalls and contradictions. Shri Hogade has quoted various clauses of the Order, in particular paras 17.2.1 and 17.2.2 which summarise the conclusions reached in this regard by the Commission. Considering its analysis and conclusions, the Commission had permitted MSEB to incur expenditure on the scheme only to the limited extent stipulated in the Order. The Commission also stated that through such implementation, and to that extent, further results and data would be available for a more informed analysis and decision at a later stage. However, at the same time, the Order states that:

*“In case MSEB wishes to pursue the single phasing scheme over and above the ceiling investment stipulated above and GoM wishes to support it as a matter of policy towards certain kinds of consumers and purposes, it would be upto GoM to provide required funds to MSEB so that the tariff to consumers is not affected.”*



3. According to Shri Hogade, considering the adverse observations recorded by the Commission on the single phasing scheme, as a result of which essentially only pilot implementation had been allowed from MSEB funds, the liberty granted to implement the scheme on a wider scale in case it is funded by Government of Maharashtra (GoM) is a clear contradiction and inconsistency, and militates against the thrust of the Order itself. The Order thus requires review to that extent, while Shri Hogade welcomed its other provisions. Shri Hogade has also mentioned the subsequent statements made by GoM that they would be bearing the financial burden for the scheme above the ceiling laid down by the Commission, by taking the responsibility of repayment of loans taken by MSEB for the purpose, etc.

4. At the hearing on 21<sup>st</sup> April, 2005, Ms Deepa Chawan, Counsel for MSEB, essentially argued that there is no internal inconsistency or contradiction in the Commission's Order as alleged by Shri Hogade. The Commission had merely made explicit the factual position, viz. that there is nothing in the statute or in the Commission's jurisdiction to deprive the GoM of its right to fund such a scheme if they wish to do so, so long as the burden is not required to be borne by MSEB or their consumers through tariff. GoM's action in doing so and MSEB's action in implementing the extended scheme on that basis cannot, therefore, be challenged, and the Commission's Order merely recognizes this. Moreover, when seen in this light, this reference in the Commission's Order is a substantive one which does not constitute an error apparent on the face of the record, or meet any of the other requirements for review set out in Regulation 85 of the MERC (Conduct of Business) Regulations, 2004. As such, the Petition is not maintainable for review by the Commission, and should not be admitted.

5. The Commission notes that Regulation 85 reads as follows:

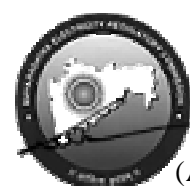
*“Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or 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 forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”*

6. The Commission also notes that the liberty granted to the State Government to fund the single phasing scheme for implementation beyond the limits imposed on expenditure by MSEB is a substantive part of the Order dated 4<sup>th</sup> March, 2005, and would be the subject matter, if at all, of appeal under the provisions of the Electricity Act (EA), 2003 and not of review. The Commission cannot ascribe to itself the powers of appeal which lies with another body under the law. The ambit of review is circumscribed by the Regulations. Considering the statutory provisions and the submissions made by Shri Hogade and MSEB, the Commission finds that the Petition does not meet the test for review by it. Thus, without going further into the merits of the case, the Commission declines to admit the Petition, and disposes of it accordingly.

7. Separately, through Shri Hogade, the Sanghatana has participated in the public process culminating in the summary Order dated 16<sup>th</sup> June, 2005 on the principles and protocol for load shedding, and has been associated with the exercise on demand-side management.

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr Pramod Deo)  
Chairman, MERC



(A.M. Khan)  
Secretary, MERC