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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4206 OF 2012

Dr.Jignesh Gokuldas & Ors.

..Petitioners.

V/s.

State of Maharashtra & Ors.

..Respondents.

Mr.S.M.Oak i/b. Sagar Joshi for the Petitioners.

Mrs.M.P.Thakur, AGP for Respondent No.1.

Ms.Deepa Chawan with Nirav Shah, Ms. Divya Jain i/b. Little & Co. for Respondent No.3.

**CORAM : A.S.OKA AND  
A.K. MENON, JJ.**

**DATED : 13TH FEBRUARY, 2015**

**ORAL ORDER (PER A.K.MENON, J.)**

1. Petitioner Nos.1 to 3 are the residents of Kausa - Mumbra, District Thane and Petitioner Nos.4 to 7 are the Municipal Councillors of the same area. In this petition, the Petitioners are seeking a writ in the nature of mandamus directing Respondent No.3 Maharashtra Electricity Regulatory Commission to withdraw the load shedding implemented within the Kausa-Mumbra area. In the alternative, they seek a direction to assess the distribution and commercial losses from distribution of electricity to Kausa-Mumbra and for compensatory relief. In the alternative to the alternate relief, they seek direction to Respondent No.3 to review the

categorization of Kausa-Mumbra area after assessing the distribution and commercial losses from the supply of electricity to villages of Kausa and Mumbra after deducting the losses caused to the extent of 25% due to fault in bill distribution mechanism and also to the extent of 10% due to technical reasons, the time limit for taking action.

2. Pending grant of such reliefs and as and by way of interim relief, the Petitioners seek directions to Respondent No.3 to (a) withdraw the load shedding from Kausa-Mumbra area and restore the regular power supply (b) to review the categorization of Kausa-Mumbra area after assessing distribution and commercial loss after deducting losses caused due technical reasons and due to faults in bill distribution mechanisms and (c) not to implement 7 hours of load shedding from 7.00 p.m. to 8.00 a.m.

3. An affidavit in reply of Mr.Rohidas Ghanshyam Sonawane, the Superintending Engineer of MSEDCL has been filed on behalf of the Respondent No.3. He states that pursuant to the directions of this Court, the representation of the Petitioners had been considered by a three Member Committee which held a meeting on 18<sup>th</sup> May, 2012. The representation made by the Petitioners was heard and decided and the load shedding protocol had been reviewed by MSEDCL on monthly basis and in the meantime daily load shedding timing were fixed from 22<sup>nd</sup> May, 2012.

4. An additional affidavit of Mr.Prabhakar Petkar, the Superintending Engineer (LM) has been filed on 25<sup>th</sup> February, 2013. In this affidavit, the deponent has explained the concept of load shedding. It was stated that Maharashtra has been experiencing significant growth in power consumption during the last few years and such increased demand has resulted in significant surge in the peak demand both during morning and evening. In order to meet the demand supply gap, it had become necessary for Respondent No.2 to resort to load shedding in various parts of the State and after considering the factors in load shedding, namely:-

- “(a) Increase in agricultural consumption,
- (b) Efforts undertaken to meet increased demand like MSEB's own generation,
- (c) Power purchase,
- (d) Capacity addition,

5. The State Load Despatch Centre ( SL.DC) is the apex body which ensures integrated operations of the power system in the State. It is responsible for the optimum scheduling and dispatch of electricity within a State in accordance with the agreements entered into between the licensee or the generating companies operating in the State. The SLDC at Kalwa monitors grid operations and supervises and controls the intra State transmission system to the State grid and issues directions for

ensuring grid operation for achieving the maximum economy and efficiency in the operation of the power system in Maharashtra. The MSEDCL as well as the Respondent No.2 are bound to comply with the directions issued by the SLDC.

6. The Maharashtra Electricity Regulatory Commission (MERC) besides determining the tariff generation, supply, transmission and wheeling of electricity in whole sale, bulk or retail, regulating electricity purchased, facilitating interstate transmission, licensing, promoting renovated sources of electricity and adjudicating disputes between licensees and generating companies, also specifies and enforces the standards in respect of the quality, continuity and reliability of services by the licensees including Respondent No.3. Thus, it is the case of Respondent No.3 that the protocol and principles for load management are not fixed in rigid parameters but the same are to be constantly evolved and considered.

7. It is averred that the Hon'ble Supreme Court of India in the case of *Maharashtra State Electricity Board & Ors. V/s. Anil Mardikar & Ors. [S.L.P. No.11437-11438/2005]* passed order dated 13<sup>th</sup> May, 2005 in an SLP filed against the orders passed by the Nagpur Bench of this Court. The said order dated 13<sup>th</sup> May, 2005 specifically refers to consultation with the State Regulator and the load shedding depends on various multiple factors as narrated above. Some of the principles and protocols evolved by the MERC

in consultation with Respondent No.3 include the following :-

- “(i) Geographical demarcation;
- (ii) Section wise demand based demarcation;
- (iii) Need based demarcation;
- (iv) Demand side management;
- (v) Non-arbitrary allocation of supply;
- (vi) Transparency and dissemination of information relating to load shedding through public hearings throughout the State; “

8. Furthermore, the load shedding timing once determined are published in the local newspaper as also on the website of Respondent No.3 in [www.mahadiscom.in](http://www.mahadiscom.in). After determining the chronological events relating to commencement from 5<sup>th</sup> May, 2000 upto and inclusive of 14<sup>th</sup> January, 2013, The load shedding circular came to be issued on 14<sup>th</sup> January, 2013 which is based on an order passed by the MERC dated 26<sup>th</sup> November, 2012. The load shedding is necessitated to the increase in agricultural consumption which is also rising. As such, a policy decision has been taken by the Respondents to meet the increased demand such as cultivation and power to increase the capacity by MAHAGENCO, central and private sectors in order to sustain the systems of various infrastructure projects.

9. The affidavit discloses the present loading shedding protocol feeder is fixed by the MERC by its order dated 26<sup>th</sup> November, 2012. The affidavit further discloses the power system

is dynamic and natural calamities, forced outages due to breakdowns in Maharashtra State Power General Company Ltd., the central power sector units, equipments, transmission lines, etc. may affect the availability of uninterrupted power supply. Despite this the third Respondent is making all efforts to provide a robust system to ensure uninterrupted power supply to all other consumers in the State of Maharashtra. It is submitted that around 80% of the State is now free of load shedding. The deponent has denied that there is discrimination in undertaking the load shedding and that the regulatory authority can consider the ground realities, the geographical situation, nature of requirement and differentiate between different classes of consumers as provided for, by the enactment to evolve various principles and protocols as clearly reflected in the order dated 13<sup>th</sup> May, 2005 of the Apex Court in in the case of Anil Mardikar & Ors. (supra).

10. The Respondents have denied that the load shedding is illegal and that no notification has been issued for undertaking the load shedding. It is asserted that since 2005 various public hearing were held by the MERC after vide publication of advanced notices of the public hearing in newspapers, other media as well as on the website of Respondent No3. In order to evolve the principles and protocol upon consultation. Under these circumstances, Respondent No.3 has fairly admitted that it is constrained to undertake load shedding as an emergency measure out of compulsion despite its earnest desire to sustain sufficient power availability.

11. The issue ought not to be gone into in a writ petition which requires this Court to exercise its extraordinary jurisdiction, ignoring the wisdom of bodies like MERC and MSEDCL. The counsel for the Respondents has taken us through the order of the Supreme Court in *Anil Mardikar & Ors. (supra)* in which the Apex Court has stated that considering the difficulties in restructuring the power supply, it has directed that the issue would be looked by the Maharashtra Electricity Regulatory Commission.

12. Having perused the pleadings and having heard the learned counsel, we have no hesitation in concluding in the facts of the present case that load shedding is not illegal and that steps for the purpose of load shedding have been undertaken in view of the requirement of the principles and protocols arrived at by MERC and by the MSEDCL. No malafides are alleged in this behalf. There is no case made out for interference by this court in its extraordinary jurisdiction under Article 226 of the Constitution of India. The load shedding schedule has been arrived at as a matter of policy on the basis of protocol arrived at by MERC.

13. The petition is accordingly disposed off in the above terms. No order as to costs.

**(A.K.MENON, J.)**

**(A.S.OKA, J.)**