

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**PUBLIC INTEREST LITIGATION NO. 99 OF 2014
WITH
CIVIL APPLICATION NO. 2946 OF 2018**

1. Hemant S/o Arunchandra Kapadia
Age : 60 years, Occ : Business,
R/o 25, Shantiniketan Colony,
Aurangabad.
2. Maharashtra Veej Grahak Sanghatana
Through : Shri Azmalkhan
President – Maharashtra Veej Grahak
Sanghatana, Dist. Aurangabad
R/o – Shahgunj, Aurangabad
(A Trust registered under Bombay
Public Trust Act)
3. Marathwada Small Scale Industries Assn
Through : President Shri Bharat Motinge
Off. MIDC, Waluj, Aurangabad.
4. Laghu Udhog Bharti, Deogiri Prant
Through President Shri Vijay M. Hulsulkar
R/o Osmanpura, Aurangabad.
5. Vidharbh Industries Association
Through Secretary Shri Rohit Agrawal,
R/o Civil Lines, Nagpur.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through : The Principal Secretary
(Energy) Government of Maharashtra,
Mantralaya, Mumbai.

...RESPONDENT

...

Advocate for the petitioner : Mr. K.C. Sant
A.G.P. For Respondent/State : Mr. S.B. Yawalkar

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

**RESERVED ON : 18TH APRIL, 2018.
PRONOUNCED ON : 20TH APRIL, 2018.**

ORDER [PER S.S. SHINDE, J.]:

By this Petition the petitioners are seeking directions to the respondent to forthwith make appointment of Judicial Member to the post of Chairperson of the Maharashtra Electricity Regulatory Commission strictly in accordance with Sections 84 and 85 of the Electricity Act, 2003 by following the law laid down by the Hon'ble Apex Court in this regard.

2. Heard learned counsel appearing for the petitioners and learned A.G.P. appearing for the respondent/State.

3. The legal issues raised in the present

Petition are squarely answered by the Hon'ble Supreme Court in the case of **State of Gujarat and Others V/s Utility Users' Welfare Association and Ors** in Civil Appeal No. 14697 of 2015 along with **other connected matters**, decided on 12th April, 2018. The Supreme Court has considered the rival contentions raised in respect of appointment of Chairperson of the Regulatory Commission established under the provisions of the Electricity Act, 2003, and in para 114 of the said judgment, reached to the following conclusion :-

"114. In view of our observations above, we conclude as under :

i. Section 84(2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so.

ii. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

iii. That, in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench.

iv. The challenge to the appointment of the Chairman and Member of the Tamil Nadu State Commission is rejected as also the *suo moto* proceedings carried out by the Commission.

v. Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time.

vi. In case there is no member from law as a member of the Commission as required aforesaid in para 2 of our conclusion, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of clause (ii) above."

4. The issues raised and prayer made in the present Public Interest Litigation, namely, to direct the Respondent to forthwith make appointment of Judicial Member to the post of Chairperson of the Maharashtra Electricity Regulatory Commission strictly in accordance with Sections 84 and 85 of the Electricity Act, 2003 by following the law laid down by the Hon'ble Apex

Court, is completely answered by the aforesaid exposition of law by the Supreme Court. The aforesaid exposition of law by the Supreme Court would govern the appointments of the post of Chairperson and also the Member of the Maharashtra Electricity Regulatory Commission.

5. For the reasons aforesaid, present Public Interest Litigation stands disposed of.

6. In view of disposal of the Public Interest Litigation, Civil Application No. 2946 of 2018 stands disposed of.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

sga/