



Madhya Pradesh Electricity Regulatory Commission

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Order Dated 21st March, 2005

Suo Motu Petition No. 21/2005

In the matter of Load Regulatory Measures implemented in the State.

Shri R.N. Mishra, Secretary, MPSEB and Shri R.P. Sharma, CE (LD) MPSEB appear for the Board.

2. The Commission filed a Suo Motu petition on 14.2.2005 when it noted the load regulatory measures announced by the MP State Electricity Board with effect from the midnight of 14.2.2005 from the newspaper reports. The petition was first heard on 17.2.2005 when the licensee Board made written submission. In its written submission, the Board had stated that the State Government vide its order dated 9.2.2005 under Section 37 of the Electricity Act, 2003 had revised the previous load regulatory measures and consequent upon the directions of the State Government, the Board had issued revised load regulatory measures vide fax message dtd. 11.2.2005 to all field units. The Commission, vide its order dated 17.2.2005 asked the licensee to move a petition under Section 23 of the Electricity Act, 2003 and directed that pending the orders under Section 23, the Board shall not recover fixed charges from those consumers who have been affected by the Board's order of 11.2.2005. The Commission, in its order stated that the Commission would certainly consider the request of the Board sympathetically as soon as it is filed under Section 23 of the Act for providing regulatory directions for distribution, supply, consumption and use as provided in the section and it would be in the interest of the Board to take immediate steps to bring the matter before the Commission.

3. The next hearing was held on 21.2.2005 when the Board made written submission that the regulatory measure had been implemented as per directions issued by the State Government under Section 37 of the Act which have to be complied with by the State Load Despatch Centre and the power of the State Government is not subject to any approval from any other authority or Commission nor is the licensee required under law to obtain permission or approval or concurrence from the MPERC. They have stated that it is for the Commission to exercise the powers under Section 23 if it so considers necessary but not to direct the licensee to file a petition for compliance of the State Government order issued under Section 37 and therefore the direction of the Commission needs to be withdrawn being contrary to law. They have further stated that since statutorily the Board is not required to approach the Commission under Section 23 for complying with directions issued under Section 37 by the State Government, the Board cannot be prevented from billing fixed charges from the consumers and Section 23 does not mandate the Commission to reduce or curtail the tariff and the direction is contrary to law. The Commission agreed with the licensee that directions under Section 37 does not presuppose any prior approval from any authority or the Commission but disagreed on the point that directions under this section could be issued to the licensee. The Commission pointed out in its order-dated 21.2.2005 that under Section 37 of the Act, the State Government has the authority to issue the directions to the State Load Despatch Centre for maintaining smooth and stable transmission and supply of electricity to any region or State. As the SLDC is a distinct entity created under section 31 of the Act responsible for carrying out real time operations for grid control and dispatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code as provided under section 32, the Commission stated that the role of the SLDC is limited as it cannot interfere in the management of the distribution business of the licensee. The Commission pointed out that for secure operation of the grid, SLDC can give directions to the licensee to restrict its demand and in accordance with the directions, the distribution licensee has to plan its supply schedule in its area of operations and before implementing any such revised supply schedule the distribution licensee has to seek the concurrence of the Commission under Section 23. While the Commission agreed with the contention of the Board the Commission on its own can act under Section 23, for arriving at any decision the facts and figures explicitly showing the stress the power system is facing needs to be submitted by the licensee and according to the data with regard to the gap in demand and availability of power submitted before the State Government. As regards the contention of the Board that Section 23 does not mandate the Commission to reduce or curtail the tariff, the Commission pointed out in its order dated 21.2.2005 that the Board, while filing proposal for tariff for the year 2004-05, had no proposed supply restrictions to any category of consumers except for agriculture and the tariff was based on the promised supply condition. Further, Section 62(4) of the Act provides for revision of tariff ordinarily once in a financial year and supply restriction can be a valid reason for amendment in tariff. After taking note of the prevailing power supply position as stated by the representatives of the Board that only rural area and industries with non continuous process are only being subjected to the load regulatory measures, the Commission ordered that the directions given on the previous date not to recover fixed charges from the affected consumers till the Commission decides the issue of bringing in line the quantum of fixed charges with the curtailment of power supply hours will remain in force in respect of such consumers as are affected.

4. Even though the next date of hearing was fixed as 25th February, 2005, the Board requested for a time of at least one week to enable them to submit the data required by the Commission. The Commission, keeping the gravity of the situation in mind, fixed the date of hearing as 28.2.2005. The licensee Board, instead of submitting the data required by the Commission and as indicated by them earlier to submit the data, gave another written submission questioning the jurisdiction of the Commission as the directions issued by the State Government under Section 37 and issues arising therefrom cannot be arbitrated or adjudicated by the Commission. They submitted that the suo motu petition itself is faulty and incomplete in the sense that the State Government, which issued the direction under Section 37, is not made a respondent. They had stated in their submission that the Board cannot be expected nor can be asked to explain the facts and/or the circumstances under which the State Government had issued the said directions under Section 37 and requested the Commission to withdraw its direction in this regard in its order dated 17.2.2005. The Board had stated in its submission that the power cut in the State of MP is not a new phenomenon and is in force since long in varying degrees and the Commission had not made any provision for reduction of fixed charges during the last revision of tariff in December 2004 and it was strange that the Commission had moved on its own when it came to large industrial consumers. In view of the above, the licensee prayed for withdrawal or at least keep in abeyance the directions contained in the order of the Commission dated 17.2.2005 till the case is finally decided, the issue of jurisdiction and maintainability of the petition be taken up first and the petition is appropriately amended to include the State Government as respondent and the direction regarding explaining circumstances be deleted from the order dated 17.2.2005. The Commission, in its order dated 28.2.2005, pointed out that they have already stated the State Government is within its right to issue direction to the SLDC under Section 37 of the Act but disagreed with the earlier contention of the licensee that it had not acted in accordance with the directions of the State Government as the directions under Section 37 cannot be issued to the licensee. Hence the contention that the Commission is trying to arbitrate or adjudicate is misplaced and the argument that the State Government should also be made a respondent to this petition even after the status had been clearly stated by the Commission in the previous order is a mischievous attempt on the part of the Board to involve the State Government to shift the focus from its wrong action. The Commission pointed out in its order that the Board itself had conceded in para 6 of the submission on 28th February 2005 that the powers of the State Government under Section 37 and the powers of the Commission under Section 23 are clear and distinct as the powers under Section 23 relates to rationing of consumption, fixing quota

consumption whereas the powers under Section 37 deal with grid safety and the control on the supply to smoothly maintain the system. The Commission, in its order dated 28.2.2005, observed as under:

◆ The Commission reiterates that the State Government has the powers to issue directions under section 37 of the EA 2003 to the SLDC for maintaining smooth and stable transmission and supply of electricity to any region or state. The said section does not presuppose any prior approval from any authority or the Commission. The SLDC, which is a distinct entity created under section 31 of the EA 2003 has to comply with these directions. The role of the SLDC is limited to the secure and economical operation of the grid but it cannot assume the role of managing the distribution business of the Board. In accordance with its role, the SLDC can direct the licensee to manage its demand within the available power. The distribution licensee has to plan its supply schedule in its area of operation accordingly. The distribution licensee before implementing any such revised schedule has to approach the Commission to issue necessary directions under section 23 of the Electricity Act 2003. In the instant case the directions from the State Government under section 37 of EA 2003 to be implemented from 14th February, 2005 were issued on 9th February, 2005. The Board had ample time to approach the Commission to seek concurrence for the intended load regulatory measures and issue of suitable directions but it chose not to. Further the Board could not reproduce the order from SLDC directing it to implement the intended load regulatory measures. It can only be concluded that the Board is assuming for itself the role of a distinct entity viz. SLDC. The load regulatory measures implemented by the Board without seeking the concurrence of the Commission under section 23 of EA 2003 are not in accordance with the provision of the Act. The Board because of its action has put the consumers under hardship. The Board cannot take any action whatsoever against consumers who wish not to comply with these load curtailment directions unless these are issued as directions of the Commission. The Commission in view of the responsibility bestowed under section 86 of the EA 2003 to specify and enforce standards with respect to quality, continuity and reliability of service by licensees cannot be expected to be a mute spectator to the action of the Board which deprives its consumers of continuous supply. Further the Commission does not subscribe to the view that the compliance to the direction of the State Government could have been achieved only through load shedding as one alternate course could have been to buy additional power, which the licensee chose not to place. The licensee for its operation is bound by the conditions of the license and the provisions of the Act, it cannot ignore them.◆

With regard to the submission that the Board cannot be expected nor can it be asked the facts and circumstances under which the State Government has issued the direction under section 37 of the Electricity Act 2003, the Commission pointed out that under section 95 of the EA 2003, all the proceedings before the Commission shall be deemed to be judicial proceedings with the meaning of section 93 and 228 of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973. As per section 94 of the EA 2003 read with section 10(1) of the MP Vidut Sudhar Adhiniyam, 2000 and clause 17 of the MPERC (Conduct of Business) Regulations, 2000 the Commission has the power to call for any information, which it feels shall be useful for the purpose of dispensing justice to the affected consumers and hence the Commission does not find merit in the submission.

As regards the submission of the Board that it is strange that the Commission had moved on its own when it comes to large industrial consumers, after explaining the circumstances under which it had initiated the suo motu petition in its order, the Commission directed the Board to explain why contempt proceedings cannot be initiated against the officer signing the submission for attributing motives to the Commission.

The Board argued through its representative during the hearing that the continuous process industries have been exempted from the restriction and the non-continuous process industries are usually in a position to make up their minimum consumption and hence they will not be subjected to any hardship. As such the Commission agreed that the fixed charges be recovered from these industries as per tariff order which are being supplied power for 24 hours. The Commission also directed the Board to explain whether this factor of continuous process and non-continuous process should be kept in mind while fixing the tariff future. The Commission did not agree to the withdrawal or keeping in abeyance the directions contained in the order-dated 21.2.2005. The petition was posted for further hearing on 9.3.2005.

5. In the hearing held on 9.3.2005, the Secretary of the Board admitted that there was a lapse on the part of the Board in not seeking the approval from the Commission under Section 23 of the EA 2003 before implementing the load regulatory measures. The Commission directed the Secretary of the Board to make a written submission of the oral apology tendered by him. In view of the pleadings in the submission of the licensee, the Commission also directed that the fixed charges due from the consumers of Divisional towns and District towns can be recovered as they have not been affected by the load regulatory measures. The Commission posted the petition for hearing on the 21st March, 2005.

6. In its written submission dated 21.3.2005, the Board tendered an unconditional apology for the last sentence para-8 of the written submission on 28.2.2005 and requested that the said sentence (last sentence of para-9 of the written submission) be treated as withdrawn, deleted and non-existent at the request of the respondent Board. Even though the Board had stated in para 4(b) that the last sentence of para-9 of the written submission be treated as withdrawn, the Commission considers that the Board means only last sentence of para-8 and not para-9 and in view of the unconditional apology tendered by the Board, the Commission decides not to proceed with contempt action against the officer who signed the written submission on behalf of the Board.

7. The Board had stated in para 5 (d) of its submission that the coherent interpretation of the provisions under section 37 and Section 23 is that the directions issued by the state Government under Section 37 are to be complied with without referring the matter to any other authority. Similarly, if any direction is issued by the appropriate Commission under Section 23 the same are to be complied with without referring to any other authority. They have also stated in para 5 (c) as under:

◆ It may kindly be appreciated that a situation may arise when the licensee, for its own reasons, may not agree to give load relief on the ground that the directions are issued to the SLDC and the licensee may approach the Commission with various grounds including that compliance of the directions of SLDC would mean loss of revenue and an equitable distribution of electricity and unless the Commission decides the matter, directions of the state Government will not be complied. This obviously cannot be the intent of law and therefore, such an interpretation cannot be said to be a coherent interpretation under Section 37 and Section 23.◆

It is to be understood that the distribution licensee need not always be a Government undertaking and may be a private entity like BSES or Tata Power as the case in Delhi who may approach the concerned Regulatory Commission for a suitable direction to implementing the Government's order would put them in to revenue loss. This was exactly what was repeatedly being stated by the Commission in the various hearings held so far that the licensee's revenue requirements are being considered by the Commission before approval of any tariff revision and any change in the quality and continuity of supply by the licensee would put the consumer at a disadvantage unless suitable tariff adjustments are carried out. Such tariff adjustments would put the licensee into revenue loss unless suitable remedial measures such as inclusion of the revenue loss in the next year's Annual Revenue Requirement is authorized by the Commission. From the above, it is very clear that the intention of section 37 and section 23 are different as has been pointed out by the Board itself in the previous submission and they have to be read accordingly.

8. The Board in para 7 of its submission had stated that as far as the legal position of complying with the direction issued by the State Government under section 37 is concerned, it is not within the jurisdiction of the Secretary of the Board to agree to approach the Hon^{ble} Commission for approval under section 23 before implementing the load regulatory measures; it would amount to demeaning the directives issued by the State Government. They have also stated that the Board's perception is based on the discussions with the Senior Counsel and the application for review of the order dated 17.2.2005 was filed before the Hon^{ble} Commission on 21.2.05 after the draft was duly vetted by the Board's Senior Counsel, Shri M. Jaiswal, Advocate. They have prayed that the Commission be pleased, among other prayers, to decide and pass appropriate orders on interpretation of Section 37 of the Electricity Act, 2003 and Section 23 of the said Act as to whether the licensee is required to approach the Commission under Section 23 before complying with the directions issued by the State Government under Section 37. The Commission is constrained to point out that this question had been answered even on the first date of hearing on 17.2.2005 and in view of the points, which have been mentioned in the previous paragraph, they have no option except to reiterate the same view that the licensee has to approach the Commission for suitable directions under section 23 of Electricity Act 2003.

Accordingly the Commission reiterates its earlier order of 09.03.2005 that the fixed charges due from the consumers in Divisional towns and District towns can be recovered as they have not been affected by the load regulatory measures. In respect of other affected consumers i.e. those affected by the load shedding orders of the Board issued vide No.04-02/PS/LS/177 dated 11.02.2005, the recovery of fixed charges shall not be made till the licensee approaches the Commission with complete data as directed in earlier hearings and obtain the Commission's directions under section 23 of Electricity Act 2003

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