

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ijaz Ahmed Chaudhry
Mr. Justice Gulzar Ahmed

Human Rights Case No.14392 of 2013

[Action taken on unprecedented Load Shedding in the Country]

AND

Human Rights Case No.790-G of 2009

[News clipping published in the daily Jinnah, Islamabad, dated 14.04.2009]

For the Applicant:

(in CMA.3399, 3671 & 3738/13) : Mr. Salman Akram Raja, ASC.
(in CMA.3650/13) : Mr. Nauman Wazir, Director PESCO.
(in CMA.3402 & 3975/13) : Sardar Ejaz Nazir, Advocate, in person.
(in CMA.3862/13) : Mr. Kamran Khan, MD, Flying Cement.

On Court's Notice:

: Mr. Muneer A. Malik,
Attorney General for Pakistan.

For Govt. of KPK : Mr. Naveed Akhtar, Addl. A.G.

For NTDC & PEPCO : Syed Iftikhar Hussain Gillani, Sr. ASC
Mr. Zargham Eshaq, MD.

For WAPDA : Syed Moazam Ali Rizvi, ASC
Mr. Badar-ul-Munir, C.E (Hydel)

For IRSA : Mr. Asjid Imtiaz Ali, Chairman.

For AEDB : Nemo.

For SNGPL : Mr. Muhammad Ashraf,
GM (Sales)

For SSGC : Nemo

For PPIB : Mr. N.A. Zubairi, MD
Barrister Asghar Khan, Sr. Law Officer.

For DISCOs : Mr. Muhammad Ilyas Khan, Sr. ASC
Mr. Mehr Khan Malik, AOR
Mr. Muhammad Saleem, CEO, LESCO
Dr. Rana Abdul Jabbar Khan, CEO, FESCO
Mr. Balighuzzaman, CEO, QESCO, Quetta
Mr. Noor Ahmed Dayo, CEO, SEPCO, Sukkar
Mr. Parvez Khan, CEO, TESCO, Peshawar
Mr. Mahboob Alam, CEO, GEPCO
Mr. Muzaffar Ali Abbasi, CEO, HESCO
Mr. Mohammad Yousaf, CEO, IESCO
Mr. Iqbal Hussain, CEO, MEPCO

For SHYDO : Nemo
Voluntary Appeared : Mr. Nazir Mughal, XEN AJK
Date of Hearing : 01.07.2013

ORDER

It has been informed by Mr. Zargham Ehsaq, M.D. (PEPCO) that as per the direction of the Court, category-wise chart of consumption of electricity has been prepared. He is directed to handover a copy of the same to the learned Attorney General for Pakistan and all other stakeholders, as they all are entitled to consume electricity, as per the formula of "equitable distribution" of the available electricity. According to the record maintained by the PEPCO, on June 30th 2013, total generation has been shown to be 13,392 MW. In this chart, total generation of electricity of KESC, Kanup, Captive Power Plants throughout in the country and IPPs operating in Karachi, along with the consumption load has not been shown except that KESC export 650 MW from NTDC.

2. Similarly, we are also required to know about the details of all the IPPs operating on Gas or RFO in the country along with the details of their electricity generating capacity and if there is a shortfall reasons for the same along with the procedure required to be followed by PEPCO, NTDC, NEPRA or any other regulatory authority to pursue them to achieve maximum target of generation of electricity as payments of their bills are causing extra load on the public exchequer and despite

of it they are not getting electricity. However, in the meanwhile Secretary WAPDA may arrange their forensic audit so we have full picture about their performance and financial liability on the public exchequer from the date of their commissioning upto date.

3. On having gone through the data, which has been supplied and during the discussion with the Managing Director, PEPCO, prima facie, we are of the opinion that subject to improvements in the management it is not difficult to achieve the target of generating electricity required to be consumed all over the country because we also note that there are Wind and Solar Projects for generating electricity, therefore, approximate figures of generating electricity from such sources be also collected.

4. The learned counsel for the DISCOs stated that 300 MW is being supplied to KESC from the Punjab, but this statement has been contradicted by the Managing Director, as according to him it is not possible to slash from the quota of the provinces because such supply to KESC is being made from the National Grid.

In such view of the matter, we direct that notice be issued to the Chief Executive, KESC to appear and explain about the generating capacity and supplies from all resources including IPPs by the KESC and as to whether the company is self sufficient to cater the requirements, if electricity is generated to its maximum capacity.

5. On the last date of hearing we have observed that the provincial governments should take responsibility to control pilferage, leakage and theft of electricity so the persons who are law abiding and consuming electricity against payments should not be penalized for the sake of those who are committing theft etc. Suggestions in this behalf were put forward that in such like situation let the provincial governments agree to receive bulk supply proportionately for the purpose of consumption of all categories including domestic and commercial etc.

6. We have also noticed that the uncounted for natural gas, as it has been pointed out by Mr. Muhammad Ashraf, GM (Sales) is about 10% which also varies with the input and out of the same about 5% of natural gas is uncounted because of theft etc. When we enquired from the representative of the SNGPL that whether against the total supply of gas to consumers of all categories 100% sale proceeds are recovered. He stated that there is always a shortfall of 10%. In such view of the matter again we are of the opinion that unless following the principle of equitable supply of the gas and also ensuring that the uncounted for gas is not reduced and theft of the gas is not fully controlled/checked, the gas company shall not be in a position to supply the gas to the IPPs, GENCOs etc., as per their requirements. Besides it, public exchequer has to suffer huge

losses because of mismanagement, which occurs on account of the reasons noted herein before.

Thus both the companies i.e. SNGPL and SSGC through their Managing Directors are required to put up complete details of the supply of the gas as has been pointed out hereinbefore including the gas which is supplied to the Captive Power Plants vis-à-vis accurate figure of purchasing electricity against the same by the NTDC, as it has been pointed out by Mr. Zargham Eshaq, MD, PEPCO.

7. Notice to all the provincial Chief Secretaries be issued either to appear themselves or make representation through their duly authorized counsel or the Advocate General(s) for giving reaction that if in bulk the supplies of electricity from the National Grid and the Sui Gas is ensured by the respective agencies as per their requirements, making them responsible to ensure equitable supply of the electricity and the gas to the consumers of all categories and the Federal Government may deduct, in advance, the charges/price through the NFC.

Notice to the Secretary Finance, Government of Pakistan, be also issued.

Let the Attorney General for Pakistan, may assist us in this behalf as well.

8. The learned Attorney General for Pakistan stated that Government of Pakistan is about to announce Energy Policy with

an object to provide relief to the consumers against the load-shedding of electricity.

9. Mr. Salman Akram Raja, learned ASC stated that the industry is suffering on account of shortage of electricity. We have pointed out to him that according to the figures which have been received so far 66% of the total generation of electricity is being supplied by the NTDC to the province of Punjab, however, if he has got any acceptable formula or suggestion based on technical advice, he should put up the same in writing enabling us to consider his request.

10. Mr. Asjid Imtiaz Ali, Chairman IRSA, has placed on record details of unexplored Hydel Power Potential, the same be placed on record and a copy of the same be handed over to the learned Attorney General for Pakistan.

11. No one is present on behalf of SHYDO, notice be issued to its CEO/MD for the next date of hearing. Notice to the NEPRA and OGRA be also issued.

12. Adjourned to 11.07.2013.

CJ.

J.

Islamabad
01.07.2013

*Hashmi**

J.