

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J

MR. JUSTICE IJAZ AHMED CHAUDHRY

MR. JUSTICE IQBAL HAMEEDUR REHMAN

H.R. CASES NO. 14392 of 2013 AND 790-G OF 2009

(Action taken on unprecedented Load Shedding in the Country)

For the Applicants Mr Salman Akram Raja, ASC
 (in CMAs 3399, 3671 & 3738/13)
 Mr. Muhammad Razi-ud-Din, in person
 (in CMA 2602/13)
 Mr. Nauman Wazir, Director, PESCO
 (in CMA 3650/13)
 Sardar Ejaz Nazir, Advocate, in person
 (in CMA 3402/13)
 Mr. Mehmood A. Sheikh, AOR
 with Mr. Kamran Khan, M.D Flying Cement
 (in CMA 3862/13)
 Sardar Ejaz Nazir, ASC
 (in CMA No. 3975/2013)

On Court Notice

Mr. Munir A. Malik,
Attorney General for Pakistan

For NTDC & PEPCO Mr. Zargham Eshaq, M.D.

For WAPDA Syed Moazam Ali Rizvi, ASC
 Mr. Badar-ul-Munir Murtaza,
 C.E. Hydel Power

For IRSA Mr. M. Waqar Rana, ASC
 Mr. Asjid Imtiaz Ali, Chairman

For SSGC & SNGPL Mr. Rehan Nawaz, G.M.
 Mr. Arif Hameed, M.D.

For AEDB Nemo

Date of hearing 19.6.2013

ORDER

In pursuance of earlier order learned Attorney General for Pakistan has submitted a comprehensive report (CMA No.3863/2013). The contentious issues on which the parties are at odds are noted in the report as follows:

"C. The contentious issues on which the parties are at odds are:-

- 1. The quantum of energy needed during peak demand. Ministry of Water and Power places this figure at 17,211 MW (thus shortage of 6,728 MW) but these figures are disputed by APTMA. The Ministry of Water and Power basis its figures on the generation figures of 2006 when there was no load shedding while APTMA contends that the peak demand is currently the same as it was in January 2013 when there was less load shedding (About 4 hours only).*
- 2. Figures of the connected load of the various DISCOs as provided by Ministry of Water and Power are contested by APTMA.*
- 3. That the participants linked the equitable distribution to a number of factors, such as, whether or not the consumers are paying their electricity bills, the prevailing weather conditions, the levels of discomfort, the nature of the industrial process, the supply or non-supply of gas, the effect on employment and binding contracts, whether export orders are involved, etc. There was no consensus as to which factors should have priority in terms of the equitable distribution of electricity. Therefore, the distribution formula needs to be continuously reviewed and appropriate adjustments need to be made.*
- D. The Ministry of Water and Power maintains that if the regional representatives of APTMA (Industry operating in particular areas) approach the DISCO that supplies them electricity, it may be possible to obtain some more relief against load shedding with in the parameters of the supply allocated to that DISCO"*

2. It is informed by Mr. Zargham Eshaq, MD NTDC that as per data collected from different generating companies 12891 MW electricity is likely to be produced during course of the day.

Province	Requirement/ Demand	Actual Supply	Percentage of supply
Balochistan	1200 MW	701 MW	58.4%
KPK	2700 MW	1870 MW	69.3%
Punjab	12080 MW	7714 MW	63.9%
Sindh	2200 MW	1403 MW	63.8%
Islamabad	1600 MW	1080 MW	67.5%
AJK	400 MW	295 MW	73.7%

3. Mr. Salman Akram Raja, learned counsel for APTMA and two cement plants, namely, (i) Maple-Leaf and (ii) Pioneer Cement stated that the expression used by this Court i.e. 'equitable supply of electricity' has been misinterpreted by the DISCOs as a result whereof number of industries have been put to close for want of electricity. On behalf of M/s. Flying Cement Company it has also been informed by Mr. Kamran Khan, M.D. that their plant was closed down w.e.f. 1.6.2013 to onward by the concerned DISCO (FESCO), however, during the meeting with the learned Attorney General for Pakistan it has been decided that the Cement Industry must be supplied electricity minimum for a period of four hours continuously. Learned Attorney General explained that it was agreed by the owners of the Cement Industry that they would share the load shedding of electricity but on account of nature of the industry at least they should be given supply of four hours continuously so that the kiln may continuously operate at least for this much period because if there is a gap in supply of electricity, kiln may not operate. M.D. NTDC also stated that arrangements have to be made in view of the agreement between the parties before the learned Attorney General with the DISCOs. We direct to all the industrialists including the owners of the cement plants to have a

discussion with the respective DISCOs and find out a solution in the manner so they get electricity at least for a period during which one of their kiln operates.

4. CMA Nos. 3402 & 3975/2013 have also been filed on behalf of the President of the District Bar Associations Mirpur, Azad Kashmir. Notice of the same be issued to PEPCO and NTDC for filing reply.

5. It has been informed by Mr. Nauman Wazir that there are so many defaulters, particularly ordinary consumers in different areas who are getting the electricity without making the payment and at the same time the persons who make the payment, on account of conduct of the former they have also to suffer because if the charges are not paid it would not be possible for the GENCOs etc. to generate electricity.

6. We have suggested that let the Attorney General seek instructions from the Federal Government as well as the Provincial Governments that the provinces should start purchasing electricity in bulk and amount of the same shall be paid or deducted by the Federal Government from their NFC Award share and as far as the Provincial Governments are concerned, they being the In-charge to maintain law and order, shall effect the recoveries from the consumers, may be the industrialists or ordinary, so the supply of electricity is supplied smoothly to the persons, who are ready to make the payment of the charges. On this learned Attorney General stated that to examine this propositions he needs some time.

7. It has also been informed by Mr. Nauman Wazir that there are so many licence holders/lease holders who have been allowed to generate hydel electricity in the Northern Areas but instead of using those sites by raising the civil works and bringing the machinery, they have kept the license with them for the purpose of further doing the business by selling the same at the higher rates and whenever objection is raised by the KPK Government they approach the Courts and get stay orders. He states that if this aspect of the case is examined and the production of the hydel electricity is encouraged, it would be quite convenient to overcome the difficulties because the industrialists would be in a position to utilise this electricity by making the payment of wheeling charges.

The Chief Secretary of the KPK is directed to collect the information from all concerned and put up a list, before the next date of hearing. He would also collect information in respect of litigation, if any, its nature and stage of litigation.

8. The MD PEPCO is required to collect the list from PPIB and AEDB of the licence holders who have not installed the projects despite issuing of licences. He would also procure information as to why the plants have not been installed so far. Meanwhile notices to both the Organizations, named hereinabove, may be issued.

9. MD, NTDC stated that within next two weeks two plants Liberty and HUBCO, Narowal are likely to come into production of electricity as a sum of Rs.33 billion is required to be paid to them.

10. Let NTDC and DISCOs continue for negotiations with the industrialists etc. as has been noted hereinabove and supply of electricity shall be made on the formula of equitable distribution to industries and other consumers of electricity.

11. Mr. Nauman Wazir also pointed out that instead of using furnace oil which is costly, it is suggested that for the thermal Coal-water slurry fuel be used. MD, PEPCO and NTDC may examine this aspect of the case as well.

Adjourned to **26th June, 2013.**

Chief Justice

Judge

Judge

Islamabad
19.6.2013
(Zulfiqar)