IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1015 OF 2014

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION
VERSUS
KATARE SPINNING MILLS PVT. LTD.
...
Advocate for Petitioner : Mr. Satish M. Godsay
Mr. S.S. Deshmukh, Advocate for respondent.

CORAM : N.W. SAMBRE, J.
DATE : 17TH MARCH, 2015.

PER COURT:

1] Heard.

2] Petitioner – company has questioned the legality and validity of the order dated 20th September, 2013 passed by the Member Secretary, Consumer Grievance Redressal Forum, Latur, whereby, the said authority has passed the following order :-

> “1] The prayer of the applicant/appellant in `A' Form in para. No. 8 is allowed. The appellant/appellant is entitled for refund of tariff difference amount of HT-IC and HT-IN from December, 2010 alongwith interest as per 62(6) of Electricity Act, 2003, Or this amount may be adjusted in the bill of the applicant/appellant.
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> 2] The applicant/appellant is declared as (HT-IN) Non continuous consumer since December, 2010.
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> 3] The order of the IRGC Circle Office, Osmanabad in Case No. 08/2013 dated 29.05.2013 is set aside.

4] If the applicant is disagree with the judgment given by the Forum then the applicant can file his representation within 60 days from the date of decision in “B” Form before the Ombudsman on the following address. Form “B” is available with free of cost in this office.”

3] The said order is questioned by Shri Godse, learned counsel for petitioner – Company on the ground that the respondent consumer is a beneficiary of the electrical energy supplied from the Express Feeder and as such, enjoyed un-interrupted supply for the industrial use. According to him, once the respondent having consumed energy and availed the benefit of un-interrupted supply, he is under obligation to pay the amount/charges as are leviable against such consumption. According to him, the order impugned is not sustainable.

4] Shri Godse would further urge that public money is at stake. According to him, the respondent is permitted to prosper at the cost of public exchequer. He further submits that respondent is liable to pay at a higher rate for the uninterrupted supply of energy and as such, he was rightly billed. In support of his contention, he has invited my attention to the submissions made by the Executive Engineer, Osmanabad Circle, justifying the categorization and billing of the respondent for the consumption of continuous electrical supply to industrial use through the Express Feeder. He submits that in the wake of the surplus energy as was available in 2007, the authority was prompted to issue circular bearing No. 22 of 2007 and even if such circular casts a burden on the petitioner to obtain option from the consumer for continuing in the category of the consumers who needs continuous supply of energy, the subsequent development, i.e. short-fall in the generation has prompted the said authority to issue subsequent circular. As such, the case of the present petitioner needs to be accepted in the light of this development.

5] Shri Deshmukh, learned counsel for the respondent submits that the circular that was issued in 2007 casts a burden on the petitioner to obtain an option from the consumer whether to continue in the category of consumer who are in need of continuous supply of energy from Express Feeder. In support thereof, he has invited my attention to the observations made in the order dated 12.9.2010 issued by the Maharashtra Electriity Regulatory Commission. According to him, the applicability of HT-1 (continuous industry) contemplates a burden on the present petitioner and such burden can be discharged by the petitioner only if there is consent from the respondent for shifting of the consumer like respondent from Contious Industry to that of non-continuous industry. He has relied upon the relevant observations which read thus :-

> “The Commission's clarification on each of these issues is given in this Order, issued under Regulation 95 of the MERC (Conduct of Business) Regulations, 2004. The Commission hereby directs MSEDCL to ensure that the clarifications given in this Order are implemented with effect from June 1, 2008 and the consumers' bills are revised accordingly. This will ensure that the Commission's order is implemented as desired from the date of enforcement of the said Order and the consumers are not unnecessarily burdened on account of lack of clarity on certain aspects related to implementation of Tariff Order in Case No. 72 of 2007.
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> 1. Applicability of HT-I (Continuous Industry)
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> In the Tariff Order, the Commission has specified that “Only HT Industries connected on express feeder and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT Industrial consumers will be deemed as HT non-continuous industry (emphasis added).

According to him, the respondent/consumer has already discharged the liability by depositing the amount as was demanded, as there was a threat of disconnection.

6] Having considered the rival submissions of the parties, it is required to be noted that the MSCDCL was required to ensure that clarification given in the order dated 12.9.2008 are implemented w.e.f. January 1, 2008 and bill of the consumer was required to be revised accordingly. The direction issued therein contemplates that only HT Industries connected to Express Feeder and demanding continuous supply will be deemed as HT-1 Continuous Industry and are given continuous supply, while the other HT consumers were deemed to have been treated HT – Non Continuous industries. In the present case, there is consent given by the respondent to be placed in the category of HT-1 Continuous Industry in the express feeder and there was no demand for continuous supply.

7] In that view of the matter, in my opinion, the order impugned in the present petition dated 20th September, 2013 passed by the authority below does not call for any interference, as no material illegality, irregularity or perversity is noticed. As such, the petition fails and stands rejected.

[N.W. SAMBRE]
JUDGE.

grt/-