

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1765 OF 2015
IN
WRIT PETITION NO.9983 OF 2014

Maharashtra State Electricity]
Distribution Company Limited.] ... Applicant

Versus

1. M/s. Shrinivas Engineering Auto]
Components Pvt. Ltd.,]
2. Consumer Grievance Redressal Forum,]
Pune Zone, MSEDCL.] ... Respondents

Mr. Shardul Singh a/w Mr. Rahul Sinha i/b DSK Legal for Applicant.
Mr. Anil D'Souza for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 21, 2015

P. C. :-

1. Heard the learned Counsel for parties.
2. The challenge in this petition is to the order made by the Consumer Grievances Redressal Forum ('CGRF'), Pune Zone, dated 31/01/2014 in Case No.20 of 2013 whereby the CGRF had directed the petitioner to refund of certain amount to respondent no.1. On

11/11/2014, the CGRF issued the direction to the petitioner to comply with its order dated 31/01/2014 with immediate effect. The petitioner, which is a government agency, has stated that on 05/12/2014, the petitioner *'in sheer and absolute fear of contempt of MERC's order, complied with the said directions dated 11.11.2014 of MERC without prejudice to our rights and contentions in the present Writ Petition and effected the said refund in the electricity bill of November, 2014.'*

3. The Civil Application further states that this factum of payment in an amount of Rs.79,87,833.63 was not informed to the Advocate for the petitioner and therefore, the Advocate for petitioner were not aware of this position when the order dated 29/01/2015 was made in this Writ Petition.

4. This Court, by its order dated 29/01/2015, has, in fact, stayed the enforcement of the order dated 31/01/2014 of the CGRF subject to the petitioner depositing the entire amount under the impugned order within a period of two weeks. Further, liberty was also granted to the respondent no.1 to withdraw 50% of the amount by furnishing a bank guarantee. There was a direction to keep such bank guarantee alive during the pendency and final disposal of this petition. In view of the payment effected on 05/12/2014, without prejudice, it is the case of the petitioner that the order dated 29/01/2015 should be modified and further, the respondent no.1 be directed to give a bank guarantee to the extent of Rs.79,87,833.63

which is the amount which has been paid by the petitioner to the respondent no.1 for purported compliance with the CGRF order dated 31/01/2014.

5. Mr. Anil D'Souza, learned counsel for respondent no.1, further submitted that the petition itself should be disposed of, since the petitioners contend that they have complied with the order dated 31/01/2014. According to Mr. D'Souza, nothing further survives in this petition though it is the case of the respondent no.1 that there is no full compliance with the CGRF order dated 31/01/2014. The submission is entirely misconceived and cannot be accepted.

6. It is very clear that the compliance with order dated 31/01/2014 is without prejudice to the rights of the petitioner as agitated in the present petition. It is to be noted that the petitioner is a government agency engaged in supply of electric power. The petitioner has challenged the similar order of CGRF in a connected petition, to which reference has been made in the order dated 29/01/2015. It is further apparent that the compliance with the order dated 31/01/2014 was without prejudice, if not out of sheer absolute fear of contempt, as claimed in the application seeking modification.

7. In the connected petition, as also in the present petition, liberty was granted to the respondent consumer to withdraw only 50% of the amount due under the orders made. In this case, however, the respondent no.1 has obtained amount of Rs.79,87,833.63 (approximately) which is far in excess of 50% of the amount directed

in the CGRF order dated 31/01/2014. At this stage, the amount has been paid to the respondent no.1 by way of credit in the electricity bill. At this stage, it would not be proper to require the respondent no.1 to deposit in this Court such amount which exceeds 50%. However, the respondent no.1 is liable to furnish a bank guarantee in respect of the entire amount which they have received from the petitioner in purported compliance with the CGRF order dated 31/01/2014. The learned Counsel for parties are not quite clear as to the precise quantum of the amount. However, that is matter of record since the petitioners are aware of the credit granted by them and the respondent no.1 is also aware of the credit availed by them.

8. Accordingly, the order dated 29/01/2015 is modified. It is declared that the payment by the petitioner in pursuance of CGRF order dated 31/01/2014 shall be regarded as without prejudice payment made under the orders of this Court. Further, the respondent no.1 to furnish bank guarantee of a nationalized bank in respect of the entire amount received by them in purported compliance with the CGRF order dated 31/01/2014, within a period of four weeks from today. Such bank guarantee shall be kept alive during the pendency and final disposal of this petition.

9. Civil Application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)