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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5596 OF 2015

Maharashtra State Electricity
Distribution Company Limited(MSEDCL) ...Petitioner
V/s.
M/s. Ultra Tech Cement Limited & Anr. ...Respondents

.....
Mr. Rahul Sinha i/b. DSK Legal for the Petitioner.
Mr. M. A. Choudhari for the Respondent no.1.
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CORAM : A. K. MENON, J.

DATE : 20TH OCTOBER, 2015.

PC.:

This Writ Petition is filed by the petitioner challenging the order dated 14th March, 2013 passed by the Electricity Ombudsman (Mumbai) pursuant to a representation filed by respondent no.1 in a dispute pertaining to tariff fixation. According to the representation filed by the respondent, the respondent was liable to be charged for High Tension-1 connection in the category of 'Continuous Industry'. The consumer categories of HT-1 industries has been bifurcated into (a) continuous industries and (b) non-continuous industries with effect from 1st October, 2006. The said bifurcation also resulted in variable energy charges and demand charges. These charges came to be enhanced vide tariff order effective from 1st May, 2007 and once again enhanced

from 1st June 2008.

2] In all these tariff orders the basic bifurcation continued namely between continuous industry and non-continuous industry. Effective from 1st June, 2006 a third category of “Seasonal Industry” was introduced. It is the case of the petitioner that the respondent no.1 is a high tension category consumer but had not submitted a mandatory certificate from the District Industry Centre certifying that it is a continuous process industry. According to the learned advocate for the petitioner, the Maharashtra Electricity Regulatory Commission (MERC) vide a tariff order dated 29th September, 2006 introduced a new tariff in the entire State of Maharashtra effective from 1st October, 2006 and under this tariff it was incumbent upon the respondent no.1 to get certification as a continuous or non-continuous industry. According to the petitioners, such a certificate should have been obtained as of 2006 itself when the new tariff order came into force. Thereafter it transpires that two tariff orders came into force. Yet the respondent no.1 did not furnish such a certificate.

3] As a result the petitioner raised a supplementary bill for the period for which the certificate was not produced. This bill was raised on a higher tariff based on the charges leviable on the non-continuous

process industry. The petitioner has acknowledged the fact that the respondent no.1 eventually submitted a certificate of continuous use which was issued by the District Industries Centre, Solapur on 14th July, 2009. The certificate was issued in relation to Grasim Cement which has subsequently been named as Ultra Tech Cement and accordingly the certificate is deemed makes a reference to the respondent no.1 Ultra Tech Cement.

4] The said certificate clearly states that the cement grinding is a continuous process and therefore it has to be considered as a continuous process industry. The certificate is annexed at Exhibit M to the petition and it is seen to be addressed to the Superintendent Engineer of the petitioner. Learned advocate for the petitioner states that the certificate is submitted belatedly and therefore for the period 1st June, 2006 till 13th July, 2009 the respondent no.1 is bound and liable to pay on the basis of the tariff charges applicable to non-continuous process industry. In view of the fact that the tariff for non-continuous process industry is higher than that of a continuous process industry a supplementary bill came to be issued and in the submission of the petitioners correctly so.

5] Having gone through the impugned orders, in paragraph 14 the Ombudsman has recorded the fact that the appellant uses electricity

for cement grinding/manufacturing from the date of supply is not disputed by the present petitioner. There is no change in the purpose for which electricity is used from the date of the supply. According to the Ombudsman, the MERC had clarified that the State Government is the appropriate authority to certify whether an industry is a continuous process industry or otherwise. In the instant case the District Industry Centre(DIC) has issued a certificate on 14th July, 2009 and therefore the 2nd respondent found that the representation deserves to be allowed and the supplementary bill was required to be set aside.

6] I find nothing wrong in this order. Since the certificate issued by the District Industry Centre very clearly refers to a memorandum letter no 1757/SIA/IMO/94 dated 7th June 1994 which declared that the process of manufacturing ordinary portland cement, special high grade cement is using the grinding process and that cement grinding process is a continuous process. The DIC had requested the Superintendent Engineer of the petitioner to consider respondent no.1 as a continuous process industry. The only grievance is that the letter was submitted almost after a period of 3 years. In my view that is not a ground for assailing the order of the respondent no2 inasmuch as the fact remains that the petitioner has been declared as continuous process industry right from 1994. Merely because the certificate of the DIC was submitted belatedly does not render

the impugned order arbitrary or perverse. I find no reason to interfere with the impugned order. In the circumstances, I pass the following order:-

- (i) The Petition is dismissed.
- (ii) There will be no orders as to costs.

(A. K. MENON, J.)