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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.11626 OF 2013**

Maharashtra State Electricity Distribution
Company Ltd. ..Petitioners
*Versus*
Kisan Mouldings Limited & Ors. ..Respondents

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Mr. Rakesh Singh i/b. M. V. Kini & Co. for the Petitioners.
Mr. P. P. Chavan a/w M.S. Kalzunkar i/b. Navdeep Vora Associates for Respondent No.1.
Mr. Mannadiar i/b. Mannadiar & Co. for Respondent No.2.
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**CORAM : A. K. MENON, J.**

**DATE : 15TH SEPTEMBER, 2015.**

P.C.:

The present petition challenges the order of the Electricity Ombudsman (Mumbai) dated 9th May, 2013 under which the Ombudsman held that the provision of electricity connection to the respondent no.1 was granted under a Dedicated Distribution Facility (DDF) from the Warangade Sub-station by providing separate 33 K V electric line from Warangade sub-station upto the first respondent's point of supply which according to the Ombudsman was clearly a DDF as clarified in the order of the Commission in paragraph 12. The order records a finding that the respondent-Maharashtra Electricity Distribution Company carried out illegal tapping of the appellant's DDF facility for providing power supply to another consumer the respondent no.3. The facts reveal that the petitioner interrupted the power supply of electricity to the respondent no.2 without any prior intimation to the respondent no.1 for carrying out the said tapping work causing some loss to them. Respondent no.1 had claimed a sum of Rs.2 lakhs as compensation.

2. After having heard the parties, it was found that the petitioner had interrupted the HT Supply to the appellant for the purpose of carrying out the work of the tapping into the appellant's DDF facility to source and provide supply of electricity to respondent no.2 without any intimation to the respondent no.1. However, in the absence of any proof of such loss, the claim for Rs.2 lakhs could not be substantiated and to meet the ends of justice, compensation of Rs.10,000/- was awarded against the present petitioner. The petitioner is aggrieved by the said order as also the finding that the tapping of the line provided to respondent no.1 was an act of negligence and an illegal act by the petitioner. It is necessary to mention here that a Dedicated Distribution Facility is defined under Regulation 2(g) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. Definition 2(g) reads as follows:-

> *"2(g) 'Dedicated distribution facilities' means such facilities, not including a serviceline, forming part of the*

*distribution system of the Distribution* Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises."

3. Specific reference is made to a Dedicated Distribution Facility under Regulation 3.3.3 under the head of "Recovery of expenses for giving supply". Regulation 3.3.3 sets that out that provision for supply to an applicant entails works of installation of Dedicated Distribution Facilities. The Distribution Licensee which is petitioner in the present case, is authorized to recover all expenses reasonably incurred on such works from an applicant, based on schedule of charges approved by the MARC under Regulation 18. Accordingly, in the facts of the present case it is not in dispute that the sum of Rs.33,58,517.59 was recovered from respondent no.1 towards cost of infrastructure for a Dedicated Distribution facilities. The supply line included 33 K V bay with allied equipment from respondents Warangale Sub-station.

4. The petitioner states that it is its case that in fact the connection provided to the first respondent is not a dedicated distribution facility at all. But it is a regulatory service line from which further tapping can be resorted to. The learned counsel for the petitioner relies upon regulation 3.3.2 which provides that where the provision of supply to an applicant entails works of laying of service line from the distributing main

to the applicant's premises, the Distribution Licensee (the petitioner) shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges. The provisions are similar to the provisions of Regulation 3.3.3 which provides for a Dedicated Distribution Facility. There is no doubt, therefore, that there is an obvious difference between the Dedicated Distribution Facilities contemplated under Regulation 3.3.3 and as defined in definition 2(g) and a serviceline from the distributing main which is contemplated under Regulation 3.3.2.

5. It is a case of the petitioner that both the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum) by order dated 11th January, 2013 erred in concluding the matter in favour of the respondent no.1 and that the said erroneous finding has been upheld by the Ombudsman. The learned counsel for the petitioner made reference to paragraph 4, 5 and 7 of the order in his attempt to demonstrate that the line provided to the respondent no.2 was legitimately provided by tapping the line lead at the request of the respondent no.1 and that the petitioner has not been in breach of any of its obligations under the Act or the Regulations in having done so.

6. Learned counsel for the respondent no.1 submitted that the facility was a Dedicated Distribution Facility. He relied upon the findings

of the Commission in paragraph 5 of the impugned order which in turn relied upon an admission of the petitioners themselves. Paragraph 5 of the impugned order is reproduced below for easier reference:-

> *“5. Respondents argued that the 33 Kv source of power to its Warangade substation itself is a 33 Kv feeder from its 220/132/33 Kv substation at Khairapada. In the year, 1999, the work of 33 Kv feeder from Khairapada was carried out by M/s. Responsive Industries (P) Ltd. Therefore, separate 33 Kv bay and line from its Warangade substation to Appellant's point of supply cannot be treated as a pure DDF. Upon query, the respondents could not point out any provision, order or circular under which DDF and pure DDF are differentiated. Upon perusal of its own circular no.43 the respondents also conceded that it is entitled to recover only normative charges from consumers as per Annexure I of the said circular and it is not entitled to recover cost of infrastructure from consumers, except from the consumers who demand DDF facilities and in this case the entire cost of infrastructure which includes 33 Kv bay extension, switchgear, control and relay panels at its Warangade substaion, and a separate 33 Kv electric line from the said substation to Appellant's point of supply was borne by the Appellant, as per Respondent's estimate and power sanction under DDF.”*

7. It is quite clear from the aforesaid that the respondents

(petitioners) in the instant petition could not point out any perversity in the order nor could they produce any circular differentiating between a Dedicated Distribution Facility and a limited Dedicated Distribution Facility. In this view of the matter it is difficult to accept the contention of the petitioner that there are varying degrees of Dedicated Distribution Facilities that can be set up. That apart, learned counsel for the respondent no.1 had also relied upon the sanction order which appears at Exhibit-1 to the petition. Perusal of the sanction order dated 5th November, 2007 reveals that the Account Head under which the HT power supply was provided to the respondent no.1 was based on a commercial circular no.43 and under the Account Head "DDF/2007-08".

8. Furthermore, under clause (5) of the sanction order, forming part of Exhibit-1, the amount of the estimate of cost has been worked out Rs.45,76,820/- The break up of the said estimate is provided by the issuing authority being the office of the Superintending Engineer, Vasai Circle, District Thane. This estimate which is also signed by the Superintending Engineer clearly sets out that the work to be executed by the consumer, namely, respondent no.1 is under the head of Dedicated Distribution Facilities.

9. Having scrutinized the relevant document there is no mistaking the fact that what was intended to be established as a power

supply facitlity for the first respondent was a dedicated distribution facility as evidenced by the documents referred to above.

10. Mr. Mannadiar, a learned counsel appearing on behalf of respondent no.2-M/s. Encrop Power Trans Pvt. Ltd. submitted that the line provided to the second respondent was legitimately tapped from the power connection provided to the respondent no.1. He sought to rely upon an agreement between first respondent and the petitioner, however, this agreement the same is not on record and hence I have not permitted him to rely upon this document. Moreover, in the affidavit-in-reply filed by the respondent no.2, no reference whatsoever is made to such an agreement and it is pertinent to mention that it is not even the petitioners case that said agreement would throw any further light on the controversy in the present petition. In the circumstances, there is no perversity in the order which is a reasoned order and there in no cause to interfere with the impugned order.

11. The Petition is accordingly dismissed. There will be no order as to costs.

**(A. K. MENON, J.)**

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## CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.