

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11628 OF 2013

Mrs. Rajani W/o Anant Mane. .. Petitioner

Vs

Maharashtra State Electricity Distribution
Company Limited and Others. .. Respondents

—

Shri A.Y. Sakhare, Senior Advocate i/by Shri Joel John Carlos for the
Petitioner.

Shri P.P. Chavan along with Shri Ravindra Chile i/by Little & Co for
Respondent Nos.1 to 4.

--

CORAM : A.S. OKA & A.K.MENON, JJ
DATED : 11TH FEBRUARY 2015

PC.:

. Heard learned senior counsel appearing for the Petitioner
and the learned counsel representing the Respondents.

2. The challenge in this Petition under Article 226 of the
Constitution of India is to the work order dated 7th September 2012
issued by the Third Respondent and the estimate of the work order
sanctioned by the Third Respondent which is sent to the Fourth
Respondent. The prayer is for directing the Third and Fourth
Respondents to carry out the construction of Indoor Direct Torque
Control (for short “DTC”) as per the directions of the Second
Respondent. It is contended that the work should be carried out at the

costs of the First Respondent. The First Respondent is the Maharashtra State Distribution Company Limited and the Second to Fourth Respondents are the officers of the said Company. The subject matter of the dispute is the Brahma Horizon Co-operative Housing Society. There is a building constructed on the property of the said Society known as “Sai Paradise Society”. There is an Outdoor Distribution Center (DTC) on the land of the said Society for supply of the electricity. The case made out in the Petition is that the Petitioner's son on behalf of the residents made a representation to the Hon'ble Deputy Chief Minister of the Government of Maharashtra praying that a direction may be issued for converting an outdoor DTC into an indoor type DTC. Reliance is placed on a communication dated 26th June 2012 issued by the Second Respondent to the Third Respondent which refers to the letter of the Hon'ble Deputy Chief Minister of the Government of Maharashtra. In the said letter, the Third Respondent was requested to look into the request of the Petitioner's son and take necessary action after observing the Rules and Regulations of the First Respondent.

3. The Fourth Respondent addressed a letter dated 7th June 2013 to the Petitioner's son. In the said letter, the Petitioner's son was informed by the Fourth Respondent that a proposal for converting an Outdoor DTC into Indoor type DTC at Brahma Horizon Co-operative Housing Society was submitted to the Competent Authority. It is stated

that the estimate for the said work has been sanctioned by the Competent Authority under DDF 1.3% Scheme. The Petitioner's son was called upon to deposit 1.3% normative charges in the sum of Rs.27,500/-. The said communication records that the work was required to be carried out at the cost of the Petitioner's son. By the impugned letter dated 7th September 2012, the Third Respondent informed the Petitioner's son that the estimate cost of the work comes to Rs.21,11,900/-. The Petitioner's husband who is a retired Judge of this Court addressed a letter dated 25th July 2013 to the Second Respondent in which a contention was raised that the burden of expenditure cannot be shifted on the residents as the conversion was sought on account of safety requirements and preservation of the human rights.

4. The contention raised in the Petition is that there was a direction issued by the Second Respondent to the Third Respondent to carry out the work of conversion and, therefore, the Third Respondent exceeded the power vested in him by demanding the aforesaid amount for carrying out the work of conversion.

5. The learned senior counsel appearing for the Petitioner invited our attention to the definition of the Dedicated Distribution Facilities in the Conditions of Supply Based on the Maharashtra

Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations 2005. He also invited our attention to the Commercial Circular No.43 and MERC Electricity Supply Code. He urged that there is a clarification issued by the Commission that no permission has been granted to recover service line charges from the prospective consumers except in cases of consumers requiring Dedicated Distribution Facilities. He urged that the provisions regarding Dedicated Distribution Facility have no relevance at all inasmuch as the prayer in the Petition is for converting an Outdoor DTC into an Indoor type DTC. He also pointed out the relevant averments in the Petition and in particular Paragraph 7 thereof. He stated that sparks from high tension wires have been observed in the premises. In Paragraph 7, it is noted that the sparks from the Outdoor Sub-station flow towards the nearby buildings and therefore, there is a high probability of fatal accidents.

6. The learned counsel appearing for the Respondents relied upon what is stated in the affidavit-in-reply of Shri Sukhdeo Narayan Sherkar and additional affidavit of Shri Prakash Sakharam Jamdhade, Executive Engineer of the First Respondent. He, therefore, submitted that no interference is called for.

7. We have considered the submissions. We have perused the affidavits. The prayer made by the Petitioner's son was for conversion of an Outdoor DTC into Indoor type. In the affidavit-in-reply of Shri Sukhdeo N. Sherkar, it is stated that all requisite safety norms in relation to the outdoor DTC have been complied with by the First Respondent and, therefore, the cost for conversion will have to be borne by the consumer or consumers. It will be necessary to refer to what is stated in Paragraph 2.1 of the said affidavit which reads thus:

“I say that Distribution Transformer Center (hereafter referred to as “DTC” for the sake of brevity) has been setup at the present place in the year 1998. I say that the service line from the sub-station upto the present said DTC is underground and there are no overhead transmission lines in respect of the DTC from the distribution sub-station of Respondent No.1. It is submitted that the DTC has been setup in accordance with all the safety requirements as provided under the relevant rules and regulations in respect of the safety of electrical equipment. I say that as of today the distances in respect of the said DTC are as under:-

Direction	Distance
East	22 ft.
West	Open Space
North	21 ft.
South	60 ft.
	Open

I say that Regulation 61 of the Central Electricity Authority (Measures relating to safety and electric supply) Regulations, 2010 reads as under:

“61. Clearance from buildings of lines of voltage exceeding 650 V.- (1) An overhead line shall not cross over an existing building as far as possible and no building shall be constructed under an existing overhead line.”

8. A reliance is placed on the Regulation No.67 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010. It is stated that the present DTC maintains necessary requisite distance from the nearest structure.

9. At this stage, it will be necessary to make a reference to the letter dated 26th June 2012 of the Second Respondent addressed to the Third Respondent which is relied upon by the Petitioner. The said letter at Exhibit-A refers to a letter dated 7th May 2012 of the Hon'ble Deputy Chief Minister. The letter dated 26th June 2012 records as under:-

“The Hon. Dy. Chief Minister, Govt. of Maharashtra vide letter under reference has forwarded a letter of Dr. Abhay Mane regarding construct of room for D.P. & transformer for the safety of the public. The copy of the letter is enclosed herewith for your ready reference.

You are requested to look into the matter personally and take necessary action observing the MSEDCLs Rules and Regulations. Report compliance within 3 days.”

10. Thus, the letter merely states that the the Hon'ble Deputy Chief Minister has forwarded a letter of the Petitioner's son. The

Second Respondent requested the Third Respondent to look into the matter and take necessary action subject to Rules and Regulations of the First Respondent. The said letter does not contain any direction to the Third Respondent to convert the outdoor DTC into indoor DTC. It will be also necessary to make a reference to Paragraph 2.4 of the said affidavit of Shri Sukhdeo N. Sherkar which reads thus:-

“2.4. I say that the MSEDCL is revenue neutral in respect of amounts which it gets through its Annual Revenue Requirement (ARR) (i.e.) the cost of the distribution system gets passed on to the consumers. In other words if a distribution system is properly laid out and the expenses for the same incurred, if there is an insistence for shifting/converting some portion of the system by a consumer and if that consumer does not pay for the same insisting on MSEDCL to bear the burden, it would actually mean that the other consumers of MSEDCL should bear the burden of shifting merely because one consumer desires the shifting. The Regulator will then have to additionally pass on such amounts in the ARR of the MSEDCL when any consumer for whatsoever reasons desires shifting/ conversion of the distribution system/part of the distribution system.”

11. There is an allegation in the Petition and in particular Paragraph 10 of the Petition based on a newspaper report regarding an accident in Mumbai where high tension wires snapped 8 homes which reduced to ashes. This issue is dealt with in the said affidavit. It is stated in Paragraph 4 of the said affidavit that the accident occurred due to overhead high tension conductor. It is stated that in the case in hand, there is no overhead high tension conductor, but the service line

from the sub-station to the present DTC is underground. Therefore, it is stated that there is no danger of snapping of conductor and causing of any mishap. There is a rejoinder filed in which a factual statement made in Paragraph 4 is not disputed.

12. As regards Paragraph 7 of the Petition, there is an additional affidavit filed by Shri Prakash Sakhamam Jamdhade. In Paragraph 5 of the additional affidavit, it is stated that two Distribution Transformer Centres have been erected in separate enclosed transformer rooms. It is stated that the service line from the sub-station upto the said Distribution Transformer Centre is underground and connects the ring main unit in the enclosed transformer room. It is stated that there is a separate fuse at ring main unit and outgoing cable from ring main unit connects the transformer. It is stated that in the event of any problems in supply from sub-station, the ring main unit trips and the supply stops and there is no question of generating any sparks as a result thereof. In Paragraph 7 of the said affidavit, it is stated thus:

“It is further submitted that the record shows that in last fifteen (15) months none of the safety fuse provided at the said two (2) Distribution Transformers were tripped or blown. I further say that there have not been any complaints from the residence that sparks were emitting from the said two (2) Distribution Transformer Centres. Thus, there is absolutely no merit in contentions raised by the

Petitioner in Paragraph 7 of the Petition. I further submit that the MSEDCL is following all the safety norms in respect of the said two (2) Distribution Transformer Centre.”

13. In Paragraph 8, there is a categorical statement that most of the Distribution Transformer Centers in Pune City are outdoor and under-loaded as in the present case.

14. The Maharashtra Electricity Regulatory Commission Regulations relied upon by the learned counsel appearing for the Petitioner suggest that a permission has not been granted to recover service line charges from the prospective consumers and the same can be taken in case of dedicated distribution facilities. The submission is that in the present case, the dedicated distribution facility is not at all sought. The said submission will not help the Petitioner. The prayer is for conversion of the outdoor DTC into an indoor DTC. All that is stated in the impugned communication is that the expenditure for conversion will have to be borne by the consumers. No legal right vested in the Petitioner or any other consumers in the same property which enjoins the Respondents to do the said work free of costs. Therefore, the said grievance regarding demand of reimbursement of the costs cannot be entertained in writ jurisdiction under Article 226 of the Constitution of India. As far as the apprehension regarding the safety of the public is concerned, the same has been dealt with in the

affidavits and in particular the affidavit of Shri Prakash Sakharam Jamdhade, the Executive Engineer of the First Respondent. We accept the statements made in his affidavit.

15. Subject to what is observed above, the Petition is rejected.

(A.K.MENON, J)

(A.S. OKA, J)