

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Civil Application (CAW) No.267 OF 2015

Wardha Power Company Limited

-Vrs.-

Maharashtra State Electricity Distribution Company Limited.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Nikhil Padhye, advocate for petitioner.

Shri R.E. Moharir, advocate for respondent/applicant.

CORAM : A.B.CHAUDHARI AND
P.N. DESHMUKH, JJ.

DATED : 27th MARCH, 2015

This civil application is for withdrawal of the statement made by the respondent duly recorded in the order dated 12.12.2014 passed by this court. The order dated 12.12.2014 reads thus -

“ Learned counsel for the respondent submits that cross subsidy surcharged payable to the petitioner because of recovery made will be paid, but the respondent would require some reasonable time for making payment. Learned counsel further submits that he would require eight weeks' time to make payment of the amount recovered.

Learned counsel for the petitioner has no objection for granting time.

We, therefore, record statement of learned counsel for respondent and grant eight weeks' time to make payment. Learned counsel for respondent states that pursuant to last order dated 19.11.2014, respondent has filed

proceedings for claiming some amount from the petitioner before MERC. Whenever the matter is filed before the MERC, we request the MERC to expedite hearing of the proceedings.

Stand over to 23.1.2015”.

Heard learned counsel for the rival parties on this application. Learned counsel for the respondent M.S.E.D.C.L. in support of his application contended that the statement made by the counsel for the respondent on behalf of the respondent is required to be withdrawn and hence the said prayer should be allowed. He submitted that the correctness of the statement recorded by this Court is not in dispute and therefore *stricto sensu* in law the prayer to withdraw the same may not be favourably considered. However, there is a need to withdraw the said statement for two reasons. The first reason is that the proceedings between the parties to this writ petition are pending and are going on before the Appellate Tribunal in respect of the subject matter. Secondly, the statement adversely affects the interest of the lowest strata of the society in respect of whom the payment of subsidy is need of the hour.

Per contra, learned counsel for the petitioner took us to the orders earlier made by MERC filed with the instant petition and submitted that the statements which have been recorded in order dated 12.12.2014 sought to be now withdrawn are exactly in consonance with the orders made by MERC and not in derogation thereof. There is, therefore, no justification for claiming such a relief for withdrawal of the statement. Even otherwise, according to him, the appellate proceedings are pending before the Statutory Authority under

the Electricity Act for adjudication and that is another reason why the application should not be entertained.

Upon hearing the learned counsel for the rival parties and having perused the earlier orders made by MERC, brought to our notice, particularly the orders about which the grievance of contempt of the earlier order of MERC was made, we are of the opinion that MERC did not approve of the attitude of respondent MSEDCL to issue invoice on monthly basis when the direction was to do so at the end of the year. In the contempt proceedings MERC reiterated the conduct of MSEDCL since it did not stop issuance of invoices on monthly basis and therefore prima facie the grievance of contempt or derogation of the orders of MERC was found to be having substance. We are, therefore, of the opinion that MERC, the Statutory Authority, has recorded its dissent and dissatisfaction about the treatment to its orders, there is no need for us to find fault with the statement recorded by this court since it is in consonance with the happenings recorded in the orders made by MERC from time to time. That apart, the appellate proceedings are pending before the Appellate Authority and still a solution can be found out during the adjudication of the proceedings at that level. We, therefore, do not entertain the present application and as such dismiss the same.

Civil application (CAW) No. 267/2015 is thus rejected.

JUDGE

JUDGE