

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6935 OF 2012

M/S G. T. L. Limited,
Franchise of M. S .E. D. C.Ltd.,
CIDCO, Cannought Place,
Aurangabad.

.. PETITIONER.

VERSUS

- 1) M/s. Birla Perucchini Ltd.,,
Plot No. B-15/3/2, MIDC Waluj,
Aurangabad.
- 2) Nodal Officer,
Office of Superintending Engineer,
M. S. E. D. C. Limited,
Aurangabad.

.. RESPONDENTS.

Advocate of Petitioner : Mr. Anil S. Bajaj.
Advocate for Respondent No. 1 : Mr. H. F. Pawar
Advocate for Respondent No.2 : Mr. Dhananjay Deshpande

CORAM : K.K. SONAWANE,J.
DATE : 23rd SEPTEMBER, 2016.

ORAL JUDGMENT :-

1] Rule. Rule made returnable forthwith. Matter is taken up for final hearing with the consent of the learned counsel for the parties.

2] The petitioner has assailed the judgment and order passed by the Consumer Grievance Redressal Forum (hereinafter

referred to, as "the CGRF" for sake of brevity) in case No. CGRF/AZ/Aur/U/364/2011/44 dated 18.02.2012.

3] The petitioner is the distribution franchisee of the Maharashtra State Electricity Distribution Co. Ltd., (hereinafter referred to as "the MSEDCL" for sake of brevity) which is the Distribution Licencee in the State of Maharashtra. The schedule of charges vide Commercial Circular No. 42 issued by the MERC is applicable to the consumers of MSEDCL requiring supply of electricity. The respondent No.1 – M/s. Birla Peruchini Ltd. is the consumer of the MSEDCL and in the year 1998 has obtained 33KV HT connection for supply of 2000 KVA for its industrial unit. Thereafter, in the year 2011, the respondent No.1 preferred an application to the petitioner for enhancement of contract demand from 2000 KVA to 3750 KVA. The petitioner processed the application and accorded sanction with estimate of sum of Rs. 22,04,616/- for additional power supply to the industrial unit of the respondent No.1. Accordingly, the respondent No.1 deposited the entire amount of the bill under protest and raised objection about the quantum of service connection charges of Rs. 1.95 Lacs . It has been alleged that the service connection charges are exorbitant and in excess in view of the schedule of charges prescribed by the MERC. It has been contended that in case of

enhancement of electricity load, the normative charges are essential to be recovered from the consumer on the total load. Eventually, the respondent No.1 - consumer approached to the Consumer Grievance Redressal Forum and filed complaint to ventilate the grievance about the excess amount of service charges. The CGRF dealt with the complaint and pursuant to the verdict of the Electricity Ombudsman in Representation No. 17 of 2011, passed the impugned order as below :-

"1] The grievance of the complainant/consumer is hereby allowed, as follows :

2] The load sanction order dated 4.7.2011 issued by the respondent No.2 & GTL Ltd., is hereby quashed with respect to Sr. No.(a) service connection charges amounting to Rs.1,95,000/-.

3] The respondent No.2 M/s. GTL Ltd. shall issue load sanction order afresh regarding service connection charges, as per order & findings recorded by the Hon'ble Electricity Ombudsman, Nagpur in Representation No. 17 of 2011 M/s. Aayudh Tools Vs. S.E. MSEDCL (U) Aurangabad & M/s. GTL Ltd. Aurangabad on 23.1.2012, with fresh period of validity within a period of two weeks from the date of receipt of this order.

4] In case of any change in the said order of Electricity Ombudsman, in writ petition preferred by M/s. GTL Ltd., the respondent No.2 shall follow order of Hon'ble High Court in this case also, without making any reference thereto.

5] Parties to bear their own costs."

4] Being dissatisfied with the aforesaid impugned order of the CGRF, the petitioner M/s. GTL Ltd. invoking the remedy under Article 226 and 227 of the Constitution of India preferred the present petition for redressal. According to petitioner, the impugned order of the CGRF is erroneous, imperfect and against the principles of natural justice. The learned forum did not appreciate the facts and circumstances in its proper perspective and committed error by allowing the complaint. The findings of the learned CGRF are solely based on the order of the Electricity Ombudsman, Nagpur in Representation No. 17 of 2011. Therefore, the petitioner – M/s. GTL Ltd. has put in controversy the legality, validity and propriety of the impugned order in the present petition.

5] Pending the proceedings for hearing on merits before admission, the petitioner M/s. GTL Ltd., moved civil Application No. 8644 of 2015 and drew attention of this Court towards the

subsequent development in regard to the change in the order passed earlier by the Electricity Ombudsman, Nagpur, in Representation No. 17 of 2011. It has been contended that the earlier order of the Electricity Ombudsman in Representation No. 17 of 2011 was set aside and quashed by this Court and the proceeding was remanded back to the Electricity Ombudsman for adjudication of the matter in issue afresh. Accordingly, the Electricity Ombudsman, Nagpur re-appreciated the facts and circumstances on record and directed to pay the service connection charges as per the rates shown in the Annexure -II, for High Tension supply. The petitioner requested to appreciate these subsequent development for just and proper decision of the present writ petition on merit.

6] I have heard the arguments advanced on account of both the sides. Learned counsel for respondent No.1 Birla Perucchini Ltd., upheld the impugned order being just, proper and reasonable one. He raised objection pertaining to locus-standi of the petitioner to prosecute the present proceeding, for the reason that period of franchisee agreement has already come to an end. It is to be noted that this issue of locus of the petitioner has already been considered by this Court in Civil Application NO. 876 of 2015 and it has been decided in favour of the petitioner – M/s. GTL Ltd.

7] Intense scrutiny of the relevant documents reflect that the entire edifice of the impugned order of the CGRF is rest on the judgment and order of the Electricity Ombudusman, Nagpur passed in Representation No. 17 of 2011, M/s. Aayudh Tools Vs. Sectional Engineer and others dated 30th June, 2012. Learned CGRF in para. Nos. 14 to 17 of the impugned order has observed as follows :-

14] Mr. Kapadiya on the other hand has submitted that, for releasing additional load, the work involved is replacement of existing CTS with new CTS of ratio 75/5A for which GTL Ltd., is not required to spend any amount except carrying out supervision work as new CTS of ration 75/5A have been produced by the consumer itself. He then placed reliance upon judgment of Hon'ble Electricity Ombudsman, Nagpur passed in Replacement No. 17 of 2011 M/s. Aayudh Tools vs. the present respondents, on 23.1.2012. He submitted that, same question was involved in the said case, therefore the present matter be decided similarly.

15] Mr. Borde. Legal Manager for GTL Ltd.in reply to the said submission, submitted that,the judgment of Electricity Ombudsman is not binding upon this forum and it can not be treated as case-law moreover, the GTL Ltd. has preferred writ petition against such judgment. He produced the copy of writ petition.

16) Mandate of judicial discipline requires this Forum to follow judgments of superior Forum or Courts. This Forum therefore unanimous on the point to follow judgment passed by the Hon'ble Electricity Ombudsman directly on the point which is involved in this Case. We the Members of this Forum therefore do not agree with the submission so made by Mr. Borde, that, the judgment of the Hon'ble Ombudsman is not

binding on this Forum. The point of controversy involved in M/S Aayudh Tools V/S The Superintending Engineer (U) & others is the same which is involved in this case. The present controversy therefore is required to be decided as per the decision of Hon'ble Electricity Ombudsman given in representation No. 17/2011 M/S Aayudh Tools V/S The Superintending Engineer (Urban).

17) No doubt, it reveals that, the GTL Ltd. has preferred writ petition against the judgment of Electricity Ombudsman as is submitted, but admittedly there is no stay order passed by the Hon'ble High Court as yet. Therefore it is obvious that, at present, the judgment and order of Electricity Ombudsman would prevail. In case of any change in the order of Electricity Ombudsman, in writ petition by the Hon'ble High Court, the respondent No. 2 is required to be followed the said judgment and order to this case also. The load sanction order, regarding service connection charges amounting to Rs. 1,95,000/- should be therefore set aside. The respondent No. 2 should be directed to issue load sanction order a fresh as per the judgment and order and findings recorded in Representation No. 17/2011 M/S Aayudh Tools V/S The Superintending Engineer & M/S GTL Ltd on dated 23.1.2012. In case of any change if made in the order of Electricity Ombudsman, in the Writ petition, the said judgment of Hon'ble High Court, be followed in this case also, without making any further reference. In view of points involved in this case, this Forum is of the opinion that the parties be directed to bear their own costs with these reasons, & findings this Forum proceed to pass following order/redressal.

8] Ultimately, the learned CGRF allowed the complaint against the petitioner M/S. GTL Ltd. and bade to issue fresh load sanction order as per the findings of the Electricity Ombudsman in

Representation No. 17 of 2011. However, these findings were the subject matter of Writ Petition No. 1807 of 2012 before this Court. After hearing both sides this court noticed some lapses in the findings expressed by the Electricity Ombudsman , Nagpur in Representation No. 17 of 2011. Therefore, the matter was relegated back to the Electricity Ombudsman for adjudication of the complaint afresh. Certain directions were also issued for decision of the representation No. 17 of 2011 afresh by the Electricity Ombudsman, Nagpur.

9] Learned counsel Shri Bajaj for the petitioner submitted that on reappraisal of the facts and circumstances on record the Electricity Ombudsman, Nagpur deviated from its earlier findings and partly allowed the Representation No. 17 of 2011. The electricity Ombudsman upheld the entitlement of the petitioner – M/s. GTL Ltd. to recover the service connection charges as per Annexure II of the Schedule of Rates, prescribed by the MERC. The Electricity Ombudsman observed that since it is an overhead connection, the Annexure I of the schedule of rates would be applied for the service connection charges @ Rs. 15,000/-. The learned counsel Shri Bajaj added that, in the instant petition, there is an underground connection for HT supply above 500 KVA. Therefore, Annexure II of the schedule of rates is applicable for service connection charges.

Moreover, there was no permission from the petitioner M/s. GTL Ltd. to carry out the work by respondent No.1 company. The demand of service connection charges @ 1.95 Lacs as per Annexure II of schedule of rates for HT supply above 500 KVA is legitimate and valid demand. Learned counsel Shri Bajaj, urged to pass appropriate order in favour of the petitioner after considering these facts and circumstances in the light of subsequent development of change in the decision of Electricity Ombudsman, Nagpur.

11] It is to be noted that after re-appraisal of the facts and circumstances on record, the Electricity Ombudsman, Nagpur in its detailed order dated 30.6.2012 described all the relevant facts and allowed the application partly for service connection charges as per Annexure I of the Schedule of Rates of the MERC. In the matter in hand the CGRF in clause IV of the impugned order has manifestly made it clear that :-

“In case of any change in the said order of Electricity Ombudsman, in writ petition preferred by M/s. GTL Ltd., the respondent No.2 shall follow order of Hon'ble High Court in this case also, without making any reference thereto”.

In view of clause IV of impugned order of the learned CGRF there would not be any difficulties for the petitioner – original respondent No.2, to follow the requisite changes occurred in the findings

expressed by the Electricity Ombudsman, Nagpur dated 23.1.2012 in representation No. 17 of 2011, without any further reference to that effect. Needless to state that this Court, in W.P. No. 1807 of 2012, did not adjudicate the petition on the anvil of merit but the matter was remanded back to the Electricity Ombudsman for its adjudication on merit afresh. There is no material no record to show that the subsequent decision of the Electricity Ombudsman dated 30.6.2012 in representation No. 17 of 2011 is a matter subjudice before any appellate forum. In these peculiar facts and circumstances, there would not be any impediment to read and construe the findings expressed by the Electricity Ombudsman, Nagpur in Representation No. 17 of 2011 dated 30.6.2012 as findings expressed by the High Court itself, as contemplated in Clause IV of the impugned order of the CGRF dated 18.2.2012.

13] In the above premises, there is no propriety to cause any interference in the impugned order at the behest of petitioner. The impugned order is itself self-explanatory to meet out the contingency in the event of any change occurred in the decisive factor. In case of any grievance pertaining to the impugned order, the parties are at liberty to approach to the CGRF, Aurangabad for its redressal.

14] In the result, there is no alternative but to dispose of the petition. Rule is therefore discharged in above terms. There shall be no orders as to costs. Civil application also stands disposed of.

[K.K. SONAWANE]
JUDGE.

grt/-