

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1988/2015
(M.S.E.D.C.L., AKOLA VERSUS ASHOK RAM GHATE & ANOTHER)

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

Court's or Judge's orders

Shri S.V. Purohit, counsel for the petitioner.

CORAM : SMT. VASANTI A NAIK, J.
DATE : SEPTEMBER 06, 2016.

By this writ petition, the petitioner, the Maharashtra State Electricity Distribution Company Limited, Akola, challenges the order of the Consumer Grievance Redressal Forum, Amravati Zone, Akola, dated 18.12.2014 allowing the complaint-grievance made by the respondent no.1 and directing the petitioner to pay a sum of Rupees Five Thousand to the respondent no.1 towards compensation for the delay in replacement of the failed transformer of required capacity and regularization of the electric supply. By the impugned order, the petitioner-Company was also directed to install the express feeder for operation of the Water Filtration Plant as early as possible and to carry out the work of Street Lights under the sanctioned SCP Scheme. Lastly, by the impugned order, a direction was issued to the petitioner-Company to take appropriate steps for an enquiry against the concerned, as per the service regulation, for causing abnormal delay in carrying out the work.

Shri Purohit, the learned counsel for the petitioner-Company, submitted that the Forum was not justified in allowing the complaint filed by the respondent no.1. It is stated that the respondent no.1 was not the

consumer of the petitioner-Company and the grievance-complaint was barred by limitation. It is stated that before filing a complaint before the Consumer Grievance Redressal Forum, it is necessary for a consumer to file appropriate proceedings before the IGRC and only if they are not decided within a period of two months, a consumer can file a grievance before the Consumer Grievance Redressal Forum. It is stated that in the instant case, the respondent no.1 had not filed any proceedings before the IGRC before approaching the Consumer Grievance Redressal Forum. It is stated that after the complaint was filed, the grievance of the respondent no.1 in regard to the non-installation of the express feeder and the work of street lights under the SCP Scheme was redressed. It is stated that though the aforesaid points were argued, they were not considered by the Forum and, hence, the impugned order is liable to be quashed and set aside.

On hearing the learned counsel for the petitioner-Company and on a perusal of the impugned order, it appears that no case is made out by the petitioner for setting aside the impugned order dated 18.12.2014. It is not possible to believe the averments made on behalf of the petitioner, for the first time in this writ petition, that the respondent no.1 is not a consumer, that the grievance was barred by limitation and that the respondent no.1 had not approached the IGRC before approaching the Forum. I have perused the reply filed by the petitioner-Company to the complaint filed by the respondent no.1. None of the aforesaid three grounds find place in the reply filed by the petitioner-Company. There is not a word in respect of the aforesaid three points, that are sought to be argued before this Court, for the first time in the

reply. It is not possible to believe that the aforesaid three grounds were argued before the Forum. Though the order of the Forum is longish, the aforesaid submissions do not find place in the impugned order. A party cannot be permitted to approach the superior Court and argue that a submission that was not there in the reply, was argued before the subordinate Court or Tribunal and the same is not considered. In the instant case, not only is the reply of the petitioner-Company silent on the aforesaid three submissions but, the submissions also do not find place in the order of the Consumer Grievance Redressal Forum. The petitioner has, for the first time, raised the grounds in the writ petition though they were not raised before the Forum. The grounds raised by the petitioner for the first time in a writ petition filed under Article 226 and 227 of the Constitution of India, cannot be considered.

Also, it is apparent from the complaint-grievance made by the respondent no.1 before the Consumer Grievance Redressal Forum that the respondent no.1 had approached all the concerned authorities including the IGRC before filing the complaint before the Consumer Grievance Redressal Forum. Though the aforesaid fact finds place in the complaint filed by the respondent no.1 on affidavit, there is no denial of the said fact. Further, it appears that the cause of action involved in the complaint is a continuous cause as the grievance of the respondent no.1 is that the transformer is not operational from two months and there is disconnection of the electric supply due to the same. The second grievance of the respondent no.1 was that though a sum of Rs.9,33,506/- was deposited in the year 2007 for the installation of the express feeder, the express feeder was not installed. If that be so, it

cannot be said that the cause of action would not be continuous. The third grievance of the respondent no.1 also shows that there is a continuous cause of action as the petitioner-Company had not carried out the work of Street Lights under the sanctioned SCP Scheme. In fact, in the reply filed by the petitioner-Company before the Forum, it appears that the petitioner-Company had admitted the non-compliance and had agreed to comply. In the circumstances of the case, there is no reason to interfere with the impugned order directing the petitioner-Company to install the express feeder for supply to the Water Filtration Plant and to carry out the Street Light works under the sanctioned SCP Scheme. The order is just and proper and calls for no interference in exercise of the writ jurisdiction.

In the result, the writ petition fails and is dismissed with no order as to costs.

JUDGE

APTE

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by: Rohit D. Apte.

Uploaded on :07.09.2016.