

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 1216 OF 2017

The Superintendent Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Old Power House Compound,
Jintur Road, Parbhani-431 401.

....Petitioner.

Versus

Dr. Babasaheb Ambedkar
Backward Class-C Co-operative
Spinning Mill Ltd.,
situated at Peth-Shivni, Tal. Pallam,
Dist. Parbhani through it's
Chairman Shri. K. Rangarajan,
Age 52 years, Occu. Business,
R/o. At Post Peth-Shivani,
Tal. Pallam, District - Parbhani.

....Respondent.

Mr. A.R. Salve, Advocate for petitioner.

CORAM : T.V. NALAWADE, J.

RESERVED ON : July 06, 2017.

DECIDED ON : July 12, 2017.

JUDGMENT :

. Notice was issued for final disposal of the matter and it is duly served on respondent. Nobody has turned up for respondent. Hence, **Rule.** The learned counsel for petitioner is heard.

2) The petition is filed by Maharashtra State Electricity Distribution Company, Parbhani, a State Government undertaking, to

challenge the order made by Consumer Grievance Redressal Forum, ('CGRF' for short) Nanded Zone in case No. 2/2016. This Forum has set aside the demand of the amount of interest and delayed payment charges ('DPC' for short) made by the petitioner as against respondent and that amount was more than Rs.15,00,000/-.

3) The respondent is Co-operative Spinning Mill of Backward Class- C people and it is situated at Peth-Shivni, District Parbhani. It had applied for supply of electricity from 33 KV line. Respondent Co-operative Spinning Mill is situated at the distance of 35 k.m. from the source 132 KV sub station Gangakhed. By laying overhead line from the source, the supply was given to the respondent. It is specific case of the petitioner that no other consumer is given supply from this line and it is the case of respondent that the supply was to be given from express feeder, but it was not given from express feeder.

4) The bill of charges of electricity consumption for March 2016 was issued by petitioner of Rs.1,40,47,700/- against the respondent. This bill includes the amount which was due for previous period as arrears and of current bill and it also included the interest and the DPC. It is the case of petitioner that the respondent had never paid entire amount demanded in the bill right from the

beginning. Some bills are produced to show that in the demands made in other months also which were similar in nature, the amounts paid were Rs.30,00,000/-, Rs.5,00,000/- etc. which were part of amount demanded in bill.

5) In April 2016, Writ Petition No. 3519/16 was filed by respondent in this Court to challenge the demand of Rs.1.22 Crore made by petitioner. In that proceeding, this Court had directed the respondent to approach appropriate Forum like CGRF. Then the respondent filed case No. 2/2016 before the said Forum. Before the Forum, the respondent raised following grounds of challenge.

(i) There was the agreement of supply of electricity from express feeder, but right from the year 2005, no supply was given from express feeder, but the charges were recovered by showing that the supply was given from express feeder.

(ii) In the bills sent from April 2015 to March 2016, excessive amounts were shown and the figures were not as per the consumption. The amount was also wrong as the rate fixed for supply from express feeder was used.

6) During inquiry made by the Forum, it was submitted for the respondent that there was power failure or tripping many times

every month. It was contended that due to such power failures, machinery was consuming more electricity and almost 300 units more were required due to each failure of electricity supply and every day, machine was required to be consume 1500 units more. It was submitted before the Forum that due to such failures, the respondent had sustained loss of working hours also.

7) Before the Forum, the petitioner denied that supply was not given from express feeder. The petitioner contended that there were occasional failures in supply, but those instances were on account of natural calamities like heavy rain, cyclone etc. The petitioner contended that such power failures cannot be considered in view of the terms and conditions of the agreement and regulations framed. It was contended by the present petitioner before the Forum that the amount due from respondent went on increasing, as at no time the amount demanded was paid in entirety by the respondent. It was contended that due to this circumstance, other amounts like DPC and the interest on amount of arrears was charged and those amounts were also included in the bills. It was contended that so far as rate of DPC and interest is concerned, there is no jurisdiction to the Forum to consider the challenge against the rates and the right to recover such amount.

8) Before the Forum, the respondent produced some correspondence and chart prepared by it showing the particulars of power failure. For illustration, some failures which were informed are quoted below :-

Eight instances of eight failure in electricity supply of the year 2001, twelve instances of the year 2002, seven instances of the year 2003, twelve instances of the year 2004, ten instances of the year 2005, 12 instances of the year 2006, one instance of the year 2007, one instance of the year 2008, three instances of the year 2012 and three instances of the year 2015.

Copy of letter of the year 2012 was also produced in which prayer was made by the respondent to the petitioner to waive DPC charges and interest. This correspondence shows that there was no grievance that the supply was not given from express feeder. Even during arguments before Forum, it was admitted by respondent that the supply was from express feeder though there was grievance about failures in supply of electricity.

9) In view of the rival contentions, the Regulations framed under Electricity Act 2003 need to be seen. Those Regulations show the jurisdiction of the Forum. Section 180 of the Electricity Act 2003

(hereinafter referred to as 'the Act' for short) shows that the State has power to make Regulations to carry out the various provisions mentioned in this section of the Act. The provision of section 181 shows that the State Commission has also power to make Regulations which need to be consistent with the provisions of the Act to carry out the provisions mentioned in this section. Under this power, the Commission has framed two Regulations viz. the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination Of Compensation) Regulations, 2005 and the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006.

10) Under the Regulations of the year 2005 mentioned above, the period is given to the petitioner for restoration of power supply. In Appendix A of Regulations, compensation payable to the consumer is mentioned if the supply is not restored as per the period fixed (Regulation No. 6). Regulation No. 11 shows that if due to natural calamities, there is interruption in supply of electricity, the petitioner cannot be held liable to pay the compensation. Regulation No. 11 of the year 2005 runs as under :-

"11. Exemptions. - 11.1 Nothing contained in these Regulations shall apply where, in the opinion of

the Commission, the Distribution Licensee is prevented from meeting his obligations under these Regulations by cyclone, floods, storms or other occurrences beyond the control of the Distribution Licensee:

Provided that the Distribution Licensee shall not be excused from failure to maintain the standards of performance under these Regulations where such failure can be attributed to negligence or deficiency or lack of preventive maintenance of the distribution system or failure to take reasonable precaution on the part of the Distribution Licensee.

11.2 The Commission may, by general or special order, exempt the Distribution Licensee from any or all of the standards specified in these Regulations for such period as may be specified in the said order."

11) Regulation No. 12 of the year 2005 is important in the present matter as it provides for the manner of determination of compensation which needs to be paid to the consumer due to failure to meet the standards of performance. Regulation No. 12 of the year 2005 runs as under :-

"12. Determination of Compensation.- 12.1

Where the Distribution Licensee finds that it has failed to meet the standards of performance specified under these Regulations, either of its own knowledge, or upon written claim filed by any person affected, the Distribution Licensee shall be liable to pay such person

and all other persons similarly affected, such compensation as has been determined by the Commission in Appendix A to these Regulations:

Provided that the Distribution Licensee shall compensate the person(s) affected not later than two billing cycles.

12.2 Failure by the Distribution Licensee to pay the compensation in accordance with Regulation 12.1 shall constitute a grievance, which shall be dealt with in accordance with the procedure set out in the Grievance Redressal Regulations :

Provided that in case the claim for compensation is upheld by the Forum, the compensation determined by the Commission in Appendix A to these regulations will be implemented by the Forum or in the case of appeals filed against Orders of the Forum before him, by the Ombudsman appointed or designated by the Commission under sub-sections (6) of Section 42 of the Act:

Provided further that such compensation shall be based on the classification of such failure as determined by the Commission under the provisions of Section 57 of the Act and the payment of such compensation shall be made by the Distribution Licensee within ninety days of a direction issued by the Forum or by the Ombudsman, as the case may be:

Provided also that no claim for compensation shall be entertained if the same is filed later than a period of sixty days from the date of rectification of the deficiency in performance standard:

Provided also that such compensation shall be paid or adjusted in the consumer's bill issued subsequent to the award of compensation."

Aforesaid Regulation No. 12 shows that a complaint needs to be made by the respondent, consumer and after that steps for rectification need to be taken by the petitioner. The period of limitation to raise the claim under Regular No. 12 would start after the date of rectification and then the compensation becomes payable. The claim needs to be filed within 60 days from the rectification date. It also shows that factual aspect is involved in the matter and even the period for which there was interruption in power supply needs to be ascertained. Only after following of this procedure, the compensation would be payable as per the rates fixed in Appendix A of the Regulations of the year 2005. If licensee, petitioner, fails to comply the Regulation No. 12.1, grievance is constituted and then Regulations of the year 2006 become available.

12) Regulations of the year 2006 mentioned above provide for procedure for redressal of the grievances of consumers.

Regulation No. 6 of this Regulation shows that that the consumer needs to approach first Internal Grievance Redressal Cell ('IGR Cell' for short). If IGR Cell does not redress the grievance, the consumer can approach CGRF. The time of two months is given to IGR Cell to take decision and action. If during this period, no action is taken, the consumer can directly go to the Forum. If there is threat of disconnection, in that case also consumer can approach Forum even before expiry of two months period given to IGR Cell. Regulation No. 6.6 in that regard runs as under :-

"6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen."

The aforesaid regulation further shows that the grievance needs to be filed within two years from the date of cause of action. In the present matter, the periods of failure are already quoted and they are in respect of the period which is prior to the period fixed in aforesaid Regulations. Due to this single circumstance, the Forum could not have considered the compensation claim of the respondent in respect of the period which was beyond the period fixed by the aforesaid Regulation (6.6).

13) Regulation Nos. 6.7, 6.8 and 6.9 of the year 2006 are

also important as they specify not only the procedure, but also the matters which can be considered and decided by CGRF. These Regulations are as under :-

"6.7 The Forum shall not entertain a Grievance:-

- (a) unless the consumer has complied with the procedure under Regulation 6.2 and has submitted his Grievance in the specified form, to the Forum;
- (b) unless the consumer is aggrieved on account of his Grievance being not redressed by the IGR Cell within the period set out in these Regulations;
- (c) unless the Forum is satisfied that the Grievance is not in respect of the same subject-matter that has been settled by the Forum in any previous proceedings; and
- (d) where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any Court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such Court, tribunal, arbitrator or authority.

6.8 If the Forum is *prima facie* of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum:

- (a) unauthorized use of electricity as provided under Section 126 of the Act;

- (b) offences and penalties as provided under Sections 135 to 139 of the Act;
- (c) accident in the distribution, supply or use of electricity as provided under Section 161 of the Act; and
- (d) recovery of arrears where the bill amount is not disputed.

6.9 The Forum may reject the Grievance at any stage if it appears to it that the Grievance is:

- (a) frivolous, vexatious, *malafide*;
- (b) without any sufficient cause;
- (c) there is no *prima facie* loss or damage or inconvenience caused to the consumer:

Provided that no Grievance shall be rejected in respect of sub-clauses (a), (b) and (c) unless the applicant has been given an opportunity of being heard."

14) In the present matter, bill amount was disputed by the respondent on the ground that supply was not given from express feeder. It is already mentioned that during inquiry made by the Forum, the respondent did not dispute that the supply was from express feeder, though the respondent continued the allegation that on many occasions, there was power failure. The aforesaid Regulations show that the consumer, respondent could have claimed compensation on the ground of loss or inconvenience, but that

amount could have been as provided in Appendix A and for that, the procedure already quoted ought to have been followed. Only if the procedure is followed, it becomes possible to substantiate the claim which can be granted under Appendix A of Regulations of 2005.

15) The procedure given in Regulation No. 6.7 of Regulation of 2006 was not followed and CGRF has no power to set aside the demands of amounts, which were made under the heads of interest and DPC. Such order cannot be made even if the consumer is able to show that there is interruption in power supply and he is entitled to get compensation as provided in Appendix A. The compensation order can be made only in respect of particular period for which there was power failure and when such claim is substantiated. The interest amount and DPC are in respect of the entire amount due from the consumer for electricity consumed by the consumer.

16) In the present matter, the Forum has made order, by which the petitioner is prevented from recovering interest and recovering DPC and the operative part of the order is as under :-

"1) The grievance/complaint of the applicant in "A" form is partly allowed.

2) The exemption is given to the applicant consumer in respect of interest and DPC charges only in the bill.

3) The non-applicant/MSEDCL shall recover from the applicant the outstanding dues excluding the interest and DPC charges upto December-2016. MSEDCL is further directed to recover the regular bill since Jan-2017 as per the norms."

In view of the discussion of the Regulations made by this Court, this Court holds that CGRF had no power to make such order. The Forum was expected to calculate the compensation as per the procedure mentioned in aforesaid Regulations, but that was not done. Due to the circumstance that the necessary procedure was not followed within time given to the consumer, it was not possible for the consumer to substantiate even that claim. Only because the respondent society is Backward Class -C Society, such order cannot be made by the Forum in it's favour. As the order is beyond the competence, the power of the Forum, the petition needs to be allowed.

17) In the result, the petition is allowed. The order of CGRF which is under challenge is hereby set aside. The grievance filed before the CGRF by the respondent stands rejected. Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/