IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2798 OF 2015

Maharashtra State Electricity
Distribution Company Ltd. & Anr. … Petitioners
V/s.
M/s. M.R. Scion Agro Processors Pvt. Ltd. & Anr. … Respondents

Mr. P.P. Chavan a/w Mr. Nirav Shah, Mr. Anuj Jaiswal i/b. Little & Co. for the Petitioners.
Mr. Vinod Sangvikar i/b Mr. U.R. Mankapure for Respondent No.1.

CORAM : G.S. KULKARNI, J.
DATE : 18th JANUARY, 2017.

P.C. :

1 Heard Mr. Chavan, learned counsel for the petitioners and Mr. Sangvikar for the respondents.

2 The challenge in this Writ Petition is to an order dated 28.11.2013 passed by the Consumer Grievance Redressal Forum, Kolhapur Circle, by which the application as filed on behalf of respondent No.1 being Complaint No.14, has been allowed inasmuch as the petitioners have been directed to refund an amount under the worksheet order after deduction of depreciation cost with interest of 9% p.a.

3 The case of the petitioners is that respondent No.1 was a beneficiary of the Dedicated Distribution Facility (DDF) by virtue of which the supply of electricity was granted to respondent No.1, however, subsequently in pursuance of an agreement dated

21.11.2008 entered between the petitioners and respondent No.1, the respondent No.1 had permitted the petitioners to use the DDF for giving supply to other consumers and accordingly the said DDF was used for other consumers as well. This was objected by respondent No.1 on the ground that the DDF came to be provided at an expenditure incurred by him and paid to the petitioners and thus respondent No.1 could not have granted supply to the other consumers when the whole purpose of DDF was only for a supply to respondent No.1. Respondent No.1 contended that this was not permissible under the relevant rules and regulations as the orders in that regard were clear and that the amount that was deposited by respondent No.1 in regard to this facility, thus was required to be refunded to respondent No.1. Inter alia, being aggrieved by the non refund of the said amount, respondent No.1 approached the Consumer Grievance Redressal Forum as constituted under the Electricity Act, 2003, seeking refund of the amount paid by respondent No.1 for the DDF.

4 Mr. Chavan, learned counsel for the petitioners, in assailing the impugned order would contend that once respondent No.1 entered into an agreement permitting the DDF to be utilized for supply of electricity to the other consumers, then respondent No.1 was estopped from making any demand for refund of the said amount. The contention is that even if legal rights are available to respondent No.1 under the relevant regulations to claim a refund, however, these rights were waived by respondent No.1 by virtue of the agreement dated 21.11.2008. It is thus submitted that the consumer forum was not correct in accepting the prayers as made by

respondent No.1 as impugned in the Petition. In support of this submission Mr. Chavan has placed reliance on the decision of the Supreme Court in the case of ***Commissioner of Customs, Mumbai vs. Virgo Steels Bombay,***[1] and more particularly the observations of the Supreme Court in paras 9 to 14 where it has been held that even a statutory right which may accrue to a person can be waived and once the rights are waived there cannot be assertion for enforcement of these rights.

5 On the other hand Mr. Sangvikar for respondent No.1 would contend that the order passed by the Consumer Commission does not require any interference. It is submitted that the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 defined DDF in clause 2.1.(g) to mean facilities clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises.

Regulation 2.1(g) reads thus:

> "**Dedicated Distribution facilities**" means such facilities, not including a service-line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises."

Reliance is also placed on Regulation 3.3.2 which reads thus:

1 (2002) 4 SCC 316

> "Where the provision of supply to an applicant entails works of laying of service-line from the distributing main to the applicant's premises, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18:
>
> Provided that the Distribution Licensee shall be entitled to use such service-line to supply electricity to any other person, notwithstanding that all expenses reasonably incurred have been recovered in accordance with this Regulation 3.3.2, except if such supply is detrimental to the supply to the consumer already connected therewith."

6 It is contended that the position in regard to Regulation 3.3.2 has been clarified by the Maharashtra Electricity Regulatory Commission (MERC) in its order dated 08.09.2006 wherein the Commission in para 6.4 has observed as under :

> "The Commission totally rejects MSEDCL's proposal to recover Service Line Charges from the prospective consumers except in cases of consumers requiring dedicated distribution facility. As per the provisions of the Act, developing infrastructure is the responsibility of Licensee. The Commission, therefore directs that the cost towards infrastructure from delivery point of transmission system to distributing mains should be borne by MSEDCL. The recurring expenses related to the capital investment on infrastructure shall be considered during ARR determination."

7 Having considered the rival submissions and having noted the above statutory provisions and the orders of the MERC, it

is quite clear that the DDF contemplates a facility which is clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises, as regulations No.2.1.(g) would define. In the facts of the present case admittedly the case of the petitioner is not that the DDF has been utilized for the purpose of the consumers only on the same premises or contiguous premises. The consequence is that once it is put to use by others it ceases to be a DDF as the whole character changes. This interpretation is also supported from the reading of Regulation 3.3.2 (supra) as also the order of the M.E.R.C. dated 08.09.2006 (supra). A cumulative reading of the above provisions and the order of the M.E.R.C. it is quite clear that the petitioners cannot be permitted to retain any amount collected from a consumer for DDF when the facility ceases to be a DDF, being put to use for several other consumers by the petitioners.

8 The contention that respondent No.1 has waived the legal right to make a demand as made before the Consumer Forum in view of the agreement dated 21.11.2008, also cannot be accepted. The agreement records that the petitioner would have '*right to tap the line or extend the line for giving supply to any other consumer or for petitioner's use*'. In my opinion, this clause in the agreement would not assist the petitioners to support a contention of waiver, for the reason that the petitioners cannot enter into an agreement which is not in consonance with the requirement of law namely the statutory regulations as also the mandate of the order as passed by the Maharashtra Electricity Regulatory Commission as noted above. Such a clause thus can have no binding effect in law.

9 There cannot be a second opinion, that the orders which are passed by the Maharashtra Electricity Regulatory Commission would become relevant from the point of view of the consumer's interest. So also the regulations which are framed under the Electricity Act, 2003 as noted above and relevant to the facts of this case, are required to be interpreted in a manner which are beneficial to the consumers. Further when it comes to distribution of electricity, the petitioners are in a monopolistic or in a dominant position, as no other player is in the field at least in this case. In this situation the consumers, (respondent No.1 in this case) cannot be said to be in a sound bargaining position in demanding supply of electricity and its terms and conditions. This inequality becomes relevant when such agreements as the MOU in the present case are required to be considered by the Court. The applicability of doctrine of inequality to such contracts cannot be ignored. It is in this circumstance that the orders passed by the MERC and the statutory regulations play an pivotal role for protection of the consumers interest. Thus in entering into such agreements the petitioners in their public character cannot be oblivious of the statutory regulations and the obligations cast on them under the various orders, which are passed by the authorities under the Act and which become binding on the petitioners as in the present case. Nor can the petitioners enter into such agreements which would defeat the regulations or render nugatory the orders passed by the adjudicating authorities under the Act. Thus, the reliance of the petitioners on the decision of the Supreme Court in ***Virgo Steels Bombay*** (supra) would not assist the petitioners and/or is misplaced in the facts of the present case.

10 In the circumtances, in my clear opinion, as the agreement itself being contrary to the requirement of law, the submission of estoppel or for that matter waiver of a legal right by respondent No.1, as urged on behalf of the petitioners cannot be accepted. It would be an argument contrary to the doctrine of public policy as envisaged under Section 23 of the Indian Contract Act.

11 In view of the above discussion, I find no merit in the present Petition. Writ Petition is accordingly rejected. No costs.

(**G.S. KULKARNI, J.**)