

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11341 OF 2016

Maharashtra State Electricity Distribution Co Ltd
through Superintending Engineer ...Petitioner
Versus
The Indian Express (P) Ltd ...Respondent

Mr Rahul Sinha, *i/b DSK Legal, for the Petitioner.*
Dr Abhinav Chandrachud, *a/w Mr Amol Joshi, i/b Ms Poorvi*
Kamani, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 15th November 2017

PC:-

1. Heard.

2. The challenge by the Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”) is to an order dated 26th October 2015 passed by a three-member panel of the Consumer Grievance Redressal Forum of the MSEDCL, Bhandup Urban Zone (“**the Forum**”). The respondent to the petition is the Indian Express Pvt Ltd, which prints and publishes several newspapers in the Indian Express group (“**the Indian Express**”; “**the newspaper**”).

3. The matter was taken to the Forum by the Indian Express in a complaint against the present petitioner. The Indian Express was using electricity under Consumer No. 149036730, Meter No. 05307827252 for a unit plot no. EL-138, Mahape, Navi Mumbai. This was a High Tension line for purpose of office and industrial use. Plot EL-138 was where the newspaper was carrying on what is known as “pre-printing activity”. At this site there, are 71 employees and 31 other staff. The actual printing press operates from a totally different plot No EL-208 at Mahape.

4. The newspaper argued that pre-printing activity included marketing, auditing, advertising billing, composition and compositing, scanning, page layout and so on and, importantly, said that much of modern newspaper printing technology was computerised and fell in the category of pre-press. On 26th August 2010 the Indian Express wrote to the electricity supply company asking for a supply of power for daily printing and publishing. It seems that thereafter the petitioners’ “flying squad” visited the premises and claimed to have found irregularities. The irregularity was that, according to the petitioner, at Plot No EL No. 138 there was no “manufacturing” activity but only commercial activity; and for the period January 2011 to November 2014, arrears of differential tariff (between commercial and industrial use) were due, aggregating to Rs.54,10,314/-. The petitioners called for payment within 30 days. The Indian Express approached the internal grievance cell. The petitioner replied. The Internal Grievance Redressal Cell passed an order and, aggrieved by that order of 11th May 2015, the Indian Express approached the Forum.

5. A copy of the impugned order passed by the Forum is at Exhibit “A” from pages 15 to 22. What the Forum seems to have done is to correctly assess the situation on the ground. It held that a rigid or clear-cut distinction between commercial and industrial activities is not possible or practical where there is so extensive use of computers and information technology. The Forum considered the “actual business carried out by the consumer on the premises where the dispute is in respect of plot no. EL-138” (page 19, paragraph 16). It sound that there was scanners, computers, conference rooms and so on. There is no dispute between the parties that the actual printing press is at plot No. EL-208. The dispute is only in regard to the power supply to plot No. EL-138, and that too only for part of the premises on that plot. The Forum noted that some of the activities are pre-press activities and form part of the newspaper printing work. It is this finding that aggrieves the petitioner, which insists that there has to be a complete and clear division; and that there cannot be a situation of this hybrid nature. It argued before the Forum that a bifurcation of units was not possible and indeed the Forum enquired whether the separate connection was possible instead of charging the whole Plot EL-138 under a single commercial tariff. The Forum then correctly and carefully addressed itself to an examination of what portion of the premises were being used for which purpose, and concluded that the second floor usage did not fall within an acceptable understanding of industrial supply or activity. It therefore issued directions that for the purpose of assessment 75% should be charged at the commercial rate and 25% at the industrial rate. In short, it found that for 25% of the premises there was acceptable industrial activity in the form of pre-press work; for the rest, a commercial rate would apply.

6. The petitioners would have it that this division is unacceptable and the whole of the unit must be used exclusively for one purpose or the other and if there is the slightest hint of non-industrial user then the whole of it must be charged to commercial purposes even if part of it is indeed used for industrial purposes.

7. The approach of the petitioner is, in my view, as unreasonable as the approach of the Forum is entirely reasonable. The impugned order takes a careful, considered and balanced view. It balances the equities of both sides. It accepts that in the current stage of the technology an over-rigid activity-classification is not possible. Indeed, the Forum went to the extent of asking the petitioner to bifurcate the units rather than using a single meter. I believe this was a perfectly reasonable and sound approach. I may also note that the division of 75%-25% is undoubtedly one that places a greater financial burden on the Newspaper but the Newspaper has not impeached that order, and has accepted it as reasonable.

8. Having regard to these circumstances, I do not believe there is the slightest infirmity in the impugned order. The petition is without merit. It is rejected. There will be no order as to costs.

(G. S. PATEL, J)