Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8201 OF 2013

Maharashtra State Electricity Distribution Co Ltd
through Superintendent ...Petitioner
Versus
Sai Erectors & Anr ...Respondents

Mr Ashish Singh, *i/b DSK Legal, for the Petitioner.*
Mr Prasad Dani, Senior Advocate, *i/b Nachiket V Khaladkar, for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 6th November 2017

PC:-

1. Heard.

2. The petition is filed by the Maharashtra State Electricity Distribution Company Limited (**"MSEDCL"**) against an order dated 5th April 2013 passed by the appellate authority, the Chief Engineer, electricity. A copy of that order is at pages 30 to 42. the appeal was filed by the present Respondent one M/s. Sai Erectors of the Sai Capital group. This is Poona-based company. It applied for electrical supply in accordance with the provisions of the statute and rules governing the Petitioner, i.e., the Electricity Act 2003, the Maharashtra Electricity Regulatory Commission Regulations 2006 and the procedures of the Petitioner itself, for a 1069 kW connected load with contract demand 856 kVa. After due inspection and being satisfied that the application was in order, the Petitioner released supply in February 2006.

3. It seems that on 24th November 2011, the MSEDCL conducted a spot inspection and made something that is described as a panchanama. This is somewhat controversial but need not detain us being largely irrelevant to the principal point of contention. MSEDCL said that Sai Erectors was reselling energy supplied to it to 16 "tenants". The assessing officer issued a final assessment order of 28th February 2008 in the amount of Rs.1,30,07,016/-. Sai Erectors challenged this in appeal under Section 127 of the Electricity Act. The appeal was admitted and registered. Parties were heard after being given an opportunity to place their documents.

4. Before the Appellate Authority, Sai Erectors contended that as the developer it had obtained a single point supply, in the manner that is usually provided to similar commercial establishments such as malls, multiplexes, information technology parks and so on. Leaving aside the fact that the panchanama was not signed on behalf of the Sai Erectors, and, too, the intervening litigation history, the fact is that Sai Erectors had applied on 4th May 2011 for a franchise route and a single point supply system.

5. An interesting aspect of the matter is that MSEDCL itself entered into a Leave and License agreement dated 13th September

2006 for commercial office premises on the 3rd floor of the same structure.

6. MSEDCL's complaint is that having obtained a single point supply, Sai Erectors could not have, without prior permission of MSEDCL installed sub-meters to assess which of its tenants/occupants was consuming how much electricity. The installation of any form of an individual metering device constituted, according to MSEDCL, a impermissible "sale" of electricity. According to MSEDCL once Sai Erectors measured the supply to tenants and collected contributions or payment from them, this constituted a sale and trading in electricity which is the exclusive right of an authorised licensees under Section 12 of the Electricity Act 2003. This is the argument that is at the heart of the dispute.

7. The appellate authority held that there was no violation; that MSEDCL itself took premises on a same terms on the 3rd floor and that there was, apart from acquiescence, no sale properly so called within the meaning of Section 12 or Section 126(1) or 126(6) of the Electricity Act.

8. In essence what the appellate authority said was that these meters used by Sai Erectors were merely measuring devices. They were not transducers that converted electrical energy into any other form of energy. There is no evidence and, indeed this is not the Petitioners' case, that the contract demand was ever exceeded at any point in time. It was also undisputed that the entire supply was within the commercial premises to which the single point connection was made. The appellate authority noted at page 40

> "It is an undisputed fact that commercial premise may have no of retail stores, offices etc., which may be rented for some duration of time, hence it cannot be construed by any prudent common person that a premise is without retail outlets/offices. Also Respondent was one of the tenant of Appellant from 24th August 2006. The fact should have been pointed out by him at the time of agreement only. As usage of electricity is for commercial purpose only and nowhere it is mentioned that there is increase is contract demand than sanctioned, there is no question of application of Section 126 to the usage of electricity."

9. This stands to reason, and follows common sense. Commercial premises such as a mall or a multiplex may have a single point supply with a stated contract demand. Within the mall or the multiplex there may be different users with widely varying electricity requirements. In a mall there may be a small store that requires no more than a minimal air conditioning and lighting. An alternative enterprise such as a food or grocery vending may require more extensive electrical appliances such as refrigerators, freezers etc. The requirements of these two, or, in other words their internal electricity consumption demands, would vary widely. So long as the aggregate demand remains within the contract demand of the mall, there is no question then of their being any illicit activity. The operator of the mall would necessarily need to know how much electricity is consumed by each retailer so that a pro rata contribution can be recovered. Interestingly, in the leave and license agreement that MSEDCL signed for the 3rd floor premises with Sai

Erectors, one of the stipulated conditions was that the licensee, i.e., MSEDCL itself, would be responsible for electricity charges. Obviously it would need to pay not on an equated basis but on a pro rata basis depending on a how much electricity it actually consumed.

10. There are, therefore, a number of ingredients in a matter such as this. The first is the contract demand. If this is not exceeded, there is no illicit activity to speak of in the first place. Within the commercial premises and within that commercial demand, the electricity regularly and lawfully supplied is used at different places for different retail outlets with varying consumption. Each retailer would need to know how much electricity is to be paid for, and this obviously requires some form of metering. It may be that the installation requires prior permission or that the meter itself must be of a certain type or standard but that is a very different thing from saying that by installing meters a single point consumer is guilty of selling electricity and violating the provisions of Section 12 or Section 126 of the Electricity Act.

11. In my view, the impugned order calls for no interference. The writ petition is dismissed. There will be no order as to costs.

12. The interim order of stay, if any, is vacated forthwith.

(G. S. PATEL, J)