

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8770 OF 2013

Maharashtra State Electricity
Distribution Company Limited .. Petitioner
Vs.
M/s.Gharda Chemicals Ltd. & Anr. .. Respondents

Mr.Kiran Gandhi i/by M/s.Little & Co. for the petitioner.
Mr.S.K. Sen a/w Mr.Sanjay Kothari, Mr.Shehzad A.K. Najam-es-Sani
i/by M/s.Manesksha & Sethna for the respondent no.1.

CORAM : R.D. DHANUKA, J.
DATE : 12th March 2018

P.C.:

. Rule. Learned counsel appearing for the respondent no.1 waives service. The respondent no.2 is a formal party. By consent of the petitioner and the respondent no.1, the petition is heard finally forthwith.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 15th December 2012 passed by the respondent no.2 thereby allowing the application filed by the respondent no.1 directing to refund 2% voltage surcharge recovered from the consumer from March 2010 till the date of the said order with interest at the RBI rate. It was directed that the said amount be worked out and be adjusted in the ensuing one, two or three bills of the consumer. It was further directed that the said working was to be done within one month from the date of service of that order and to give credit in the ensuing bills. This order of the Consumer Grievance Redressal Forum (CGRF) has been impugned by the petitioner in this petition.

3. It is not in dispute that after impugning the said order by the petitioner, the petitioner has already given credit at 2% voltage surcharge in the subsequent bills raised upon the respondent no.1. The interest directed to be paid by the CGRF however has not been credited in the bills of the respondent no.1.

4. Learned counsel for the petitioner submits that the petitioner is entitled to adjust the technical loss alleged to have been suffered by the petitioner and thus the authority ought have restricted the refund with due regard to the actual loss.

5. The next submission of the learned counsel for the petitioner is that the validity of the order passed by the MERC on 9th November 2010 clarifying that the voltage surcharge at 2% cannot be charged if power supply was given on dedicated express feeder in one of the appeals bearing DFR No.851 of 2011 was raised in an appeal. The said appeal came to be dismissed by the Appellate Tribunal on 21st October 2011 on the ground of delay. Supreme Court has admitted the Special Leave Petition and is numbered as Civil Appeal No.2812 of 2012. The said Civil Appeal is pending before the Supreme Court. He submits that if the Supreme Court sets aside the said order dated 9th November 2010 passed by the MERC in Case No.52 of 2010, in that event, the petitioner would not be liable to refund any amount to the respondent no.1 or to give credit of the amount recovered by the petitioner towards voltage surcharge.

6. Mr.Sen, learned counsel for the respondent no.1, on the other hand, submits that the matter pending before the Supreme Court in Civil Appeal No.2812 of 2012 is only arising out of the order dated 21st

October 2011 passed by the Appellate Tribunal dismissing the Appeal No.DFR No.851 of 2011 on the ground of delay. On 30th August 2013, Supreme Court has admitted the said Special Leave Petition and is numbered as Civil Appeal No.2812 of 2012. He submits that in the said pending civil appeal before the Supreme Court, the Supreme Court can not decide the validity of the order dated 9th November 2010 passed by the MERC in Case No.52 of 2010.

7. Learned counsel invited my attention to the order dated 24th January 2014 passed by Shri Justice R.M. Savant in Writ Petition No.10936 of 2013 in the case of ***Maharashtra State Electricity Distribution Company Ltd. Vs. M/s.Balbir Alloys Pvt. Ltd. & Anr.*** considering the identical issue. He submits that this Court has already held that in view of the interim order dated 5th March 2010 passed by the MERC holding that such surcharge is not leviable on a consumer having a dedicated feeder line, recovery of surcharge is not permissible. This Court also recorded a statement made by the learned counsel for the Maharashtra State Electricity Distribution Co. Ltd. that it was the correct position of law and that interim order dated 5th March 2010 was passed by the MERC. In my view, the order and judgment dated 24th January 2014 passed by this Court in Writ Petition No.10936 of 2013 would apply to the facts of this case. I am respectfully bound by the said judgment.

8. It is an admitted position that on 5th March 2010, the MERC passed an order permitting the petitioner to levy voltage surcharge on all the consumers who were supplied electricity at voltage lower than those specified in the SOP Regulations. The said order dated 5th March 2010 was subsequently modified by the MERC on 12th September 2010 in Case

No.111 of 2009. It was clarified that if such consumer is supplied power through an express feeder, then instead of levying voltage surcharge @2%, such consumers shall be billed on the basis of consumption recorded by meters installed at the source of supply and at the consumer's end, whichever is higher.

9. By an order dated 9th November 2010 in Case No.52 of 2010, the MERC clarified that the voltage surcharge at 2% cannot be charged if power supply is given on dedicated express feeder. On 2nd June 2011, the Commission confirmed in Case No.31 of 2011 its views about levy of voltage surcharge @2% on consumers connected on express feeder/dedicated feeder. It was further observed in the said order that it would be the responsibilities of installing meters of same class of accuracy at both the sub-station and consumer end rests with the petitioner and consumer cannot be held responsible for the same.

10. The order passed by the Commission from time to time is in force even till today. The said order is not stayed by the Supreme Court or by the Appellate Authority in any other matter. A perusal of the order passed by the CGRF by which the complaint of the respondent no.1 came to be disposed of clearly indicates that the authority has considered various orders passed by the MERC and has also rendered a finding that there is no dispute that the respondent no.1 has been connected on an express feeder/dedicated feeder. I am thus not inclined to interfere with the impugned order passed by the CGRF. The petitioner has already given credit to the extent of refund of 2% voltage surcharge on the principal amount in the subsequent bills raised upon the respondent no.1.

In the three bills arising out of 2% voltage surcharge, the petitioner has given credit only of the principal amount and has not given credit in so far as the interest is concerned.

11. The petitioner is directed to give credit of the interest amount in the subsequent three bills raised upon the respondent no.1 without fail. It is however made clear that if any order is passed by the Supreme Court in the pending Civil Appeal No.2812 of 2012 setting aside the validity of the order dated 9th November 2010 passed by the MERC in Case No.52 of 2010 and if it is declared by the Supreme Court that the petitioner is not liable to refund any voltage surcharge, the petitioner would be at liberty to take appropriate action in that regard in accordance with law.

12. Rule is discharged with aforesaid directions. Writ petition is accordingly disposed of. No order as to costs. Parties to act on the authenticated copy of this order.

R.D. DHANUKA, J.