

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Contempt Petition No.58 of 2017
in
First Appeal No.778 of 2015
(M/s Kloud Data Labs Pvt. Ltd. .vs. Maharashtra Airport Development
Company Ltd. and another.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. T.D. Mandlekar, Advocate for Petitioner.
Mr. Nitish Gupta and Mr. R.R. Pimpalkhute, Advocate for
Respondent No.1.
Mr. N.B. Kirtane, Advocate for Respondent No.2.

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CORAM : Manish Pitale, J.
DATED : January 25, 2018.

This is a contempt petition filed under Article 215 of the Constitution of India read with provisions of the Contempt of Courts Act, 1971, alleging that the respondents have committed contempt of the order dated 30.10.2015 passed by this Court. It is the case of the petitioner that the direction of *status quo* granted in the aforesaid order dated 30.10.2015 has been violated by the respondents and that therefore, they are liable for being punished for contempt of this Court.

2. The facts in brief giving rise to this contempt petition are that on 23.07.2013, the petitioner filed Special Civil Suit No. 548 of 2013 before the Court of the Civil Judge, Senior Division, Nagpur, being a suit for declaration and permanent injunction. The prayers

made in the suit pertained to alleged illegal and inflated bills raised by the respondent no.1 against the petitioner, seeking to charge tariff for supply of electricity at a rate higher than what was agreed. It was claimed that the petitioner was entitled to tariff at a concessional rate of Rs.2.97 per unit, while higher rate was being charged by the respondent no.1. In this suit, an application was moved for temporary injunction wherein the petitioner prayed that the respondent no.1 be restrained from disconnecting power supply to the petitioner, which is a software industry. On this application for temporary injunction, the said Court passed an order directing the parties to maintain *status quo*.

3. In the aforesaid suit, the respondents/defendants moved an application under Order 7 Rule 11 of the Civil Procedure Code, seeking rejection of plaint on the ground that the Court did not have jurisdiction to entertain the suit filed by the petitioner in view of Section 145 of the Electricity Act, 2003. Under the said provision, no Civil Court has jurisdiction to entertain any suit or proceeding in respect of any matter which an Assessing Officer referred to in Section 126, or an appellate authority referred to in Section 127 of the said Act, is empowered to demand.

4. The aforesaid application for rejection of plaint was allowed by the said Court by an order dated 30.04.2015 and it was held that the suit was not

maintainable. Aggrieved by the said order, the petitioner filed First Appeal No. 778 of 2015 before this Court wherein an interim order was passed continuing the direction of *status quo* granted by the lower Court. On 30.10.2015, this Court clarified the said order, stating that the order of *status quo* dated 28.08.2015 passed by the lower Court would continue to operate. Since the pecuniary jurisdiction of the District Court was enhanced in the mean time, this Court by the aforesaid order dated 30.10.2015 transferred the appeal to the District Court at Nagpur to be adjudicated on merits. The said appeal is pending and the order of *status quo* has been continued.

5. It is the case of the petitioner that despite the fact that the *status quo* order was in operation and continues to operate, on 24.10.2016 the respondent no.1 issued a notice to the petitioner under Section 56(1) of the Electricity Act, 2003, threatening disconnection of electricity supply on the ground that arrears of electricity charges had not been paid. According to the petitioner, the aforesaid notice issued by the respondent no.1 was in clear contempt of the directions of *status quo* granted by this Court and which continues to operate even during the pendency of the appeal before the District Court. The respondent no.1 i.e. Maharashtra Airport Development Company (MADC) has filed its submissions in response to the notice issued by this Court in the present contempt petition. It is stated in the said submissions that although the aforesaid notice dated 24.10.2016, was demand cum

disconnection notice, it could never have been construed as a notice for disconnection of electricity supply. It was stated that in the aforesaid notice and in subsequent bills issued by the respondent no.1 the amount of principal arrears have been stated against the petitioner, which have been claimed as per the rate at which the respondent no.1 contends that it is entitled to charge the petitioner. It is further submitted that in the said response of respondent no.1 that a letter dated 24.04.2017 was issued withdrawing the demand/disconnection notice and other notice issued to the petitioner. It is further contended that the amount towards principal arrears reflected in the bills issued to the petitioner is more by way of abundant caution so that in the future the petitioner would not be entitled to claim that the entitlement of the respondent no.1 towards such arrears was barred by limitation. It is further pointed out that the supply of electricity to the petitioner has never been disconnected.

6. In response to the notice issued by this Court in the contempt petition, the respondent no.2 has also filed its reply stating that the allegations in the contempt petition are essentially against the respondent no.1, as there is no direct contractual relationship between the petitioner and the respondent no.2. Thereafter, detailed submissions have been made in respect of the reason for the tariff being charged to the petitioner over and above the rate of 2.97 per unit.

7. Mr. Tushar Mandlekar, learned counsel

appearing on behalf of the appellant has submitted that the fact that the disconnection notice was issued on 24.10.2016 by respondent no.1 despite the *status quo* order passed by this Court shows that there has been wilful contempt of the order of this Court committed by the respondents. It is submitted that even in subsequent bills issued by the respondent no.1, the amount towards principal arrears and interest thereon has been shown, which is also a clear contempt of the order of *status quo* passed by this Court. It is submitted by the learned counsel for the petitioner that the amount shown towards principal arrears and interest ought to be deleted from the bills and that the petitioner is entitled to supply of electricity @ Rs.2.97 per unit. Supply of electricity by the respondents at a higher rate also amounts to contempt of Court.

8. On the other hand, Mr. Nitish Gupta, learned counsel appearing on behalf of the respondent no.1, submits that as pointed out in the detailed affidavit filed on behalf of respondent no.1, no case of contempt of the order of this Court is made out by the petitioner. Reliance is placed on the contents of the submissions filed on behalf of respondent no.1 and it is emphasised that the said respondent is concerned about its entitlement of charging tariff for supply of electricity to the petitioner as is reflected in the bills raised by it and that the entitlement towards principal arrears and interest is yet to be decided on merits by the competent authority/Court and that therefore, there is no question of respondent no.1 having committed contempt of this

Court. It is submitted that the respondent no.1 would delete the details of principal arrears and interest from the bills if the petitioner undertakes that it shall not raise a ground before the appropriate forum that by doing so the respondent no.1 has relinquished its claim for such principal arrears and interest thereon. It is pointed out that the order of *status quo* passed by this Court, which continues to operate, pertains to supply of electricity and that at no point of time was there any disconnection of supply. It was clarified that the notice for disconnection was more towards pointing out the arrears payable by the petitioner and that the amounts reflected in the bills towards principal arrears and interest thereon were as per the format of the bill, which was common to all the consumers.

9. Mr. N.B. Kirtane, learned counsel appearing on behalf of respondent no.2 reiterated the stand taken by the respondent no.1 and he submitted that the grievance raised by the petitioner in the instant contempt petition was essentially against the respondent no.1. It was submitted that the question of tariff for supply of electricity is regulated by the provisions of the Electricity Act, 2003 and that there was already an order passed by the Maharashtra Electricity Regulatory Commission dated 23.08.2013, wherein it had been held by the said Commission that an inter se agreement or arrangement between the respondent nos. 1 and 2 to supply electricity at the concessional rate was not sustainable, being contrary to the provisions of the Electricity Act, 2003. Placing reliance

on the said order, it is submitted that there is no contempt committed by the respondents in the present case.

10. Having considered the submissions made on behalf of the parties and having perused the documents on record, the question that arises for consideration is, whether the respondents have committed contempt of the order dated 30.10.2015 passed by this Court, whereby the parties were directed to maintain *status quo* during the pendency of the appeal, which was transferred to the District Court, Nagpur.

11. In order to prove that the respondents are guilty of having committed contempt of this Court, under the provisions of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, the petitioner is required to show that the respondents have wilfully violated the directions of *status quo* granted by order dated 30.10.2015, which admittedly continues to operate. The contention of the petitioner is that when disconnection notice dated 24.10.2016 was issued by the respondent no.1 threatening to disconnect electricity supply to the petitioner if the amount towards arrears were not paid within fifteen days, it amounted to contempt of this Court because such a threat was nothing but a violation of the *status quo* directed to be maintained by this Court. It is also submitted that when the respondent no.1 has repeatedly shown amount towards principal arrears and interest thereon in the bills issued to the petitioner, it is relatable to the threat

of disconnection as per the notice dated 24.10.2016. According to the petitioner these acts of the respondents amount to wilful violation of the order of *status quo* and, therefore, they are liable to be punished for contempt of this Court.

12. The most crucial aspect of this case is that it is an admitted position that till date supply of electricity is continued to the petitioner from the respondents without any break. In other words, there has been no disconnection of electricity supply till date. In this context, the prayer made by the petitioner in its application for temporary injunction filed before the Court of appeal assumes significance because all that the petitioner prayed for was an order restraining the respondent no.1 from disconnecting power supply during the pendency of the suit. In this context, an order of *status quo* was granted, which was continued till date. Therefore, the order of *status quo* is relatable only to the disconnection of electricity supply to the petitioner. The question of the rate at which the petitioner is to be charged for supply of electricity by the respondents is a matter of merit which is yet to be decided. The prayer made by the petitioner in the suit filed before the Court below included, inter alia, a declaration that it was entitled to buy power/electricity from the respondents at the concessional rate of Rs.2.97 per unit. This question is yet to be decided on merits.

13. I have considered submissions and the reply

filed on behalf of the respondents in the instant petition and I find that the respondent no.1 has given an explanation as to why the disconnection notice dated 24.10.2016 was issued. In its submissions, the respondent no.1 has also explained the context in which bills were issued showing principal arrears and interest thereon payable by the petitioner. The respondent no.1 has contended that it would delete the amount towards principal arrears and interest thereon from the bills being issued to the petitioner for supply of electricity, on an undertaking to be given by the petitioner that it shall not take non-raising of principal arrears in bills by the said respondent as a ground before the appropriate forum to contend that the said amount has been relinquished by the respondent no.1. In other words, the respondent no.1 seeks to reserve its claim of such principal arrears and interest thereon which according to the said respondents is payable by the petitioner. On the other hand, the learned counsel for the petitioner submits that the petitioner is not liable to give any such undertaking because it is entitled to uninterrupted supply of electricity at the concessional rate of Rs.2.97 per unit.

14. I have considered the submissions of the rival parties and I find that the controversy regarding the rate at which electricity is to be supplied to the petitioner is yet to be decided because the suit filed by the petitioner was dismissed (plaint was rejected) at the out set by the lower Court under Order 7 Rule 11 (d) of the Civil Procedure Code, holding that the suit was not

maintainable on the ground of jurisdiction. The appeal filed by the petitioner challenging the same is pending before the District Court. Thus, the central controversy between the parties as regards the rate at which electricity is to be supplied, is yet to be decided on merits. Therefore, the petitioner is not justified in claiming that the order of *status quo* initially passed by the lower Court and which has continued till date as per the order dated 30.10.2015 passed by this Court, pertains to its entitlement of continued supply of electricity at the aforesaid concessional rate. Until and unless such entitlement is decided on merits in the pending proceedings, no such finding can be given in favour of the petitioner. In this contempt petition the limited area of examination is as to whether there has been any violation of the *status quo* order, which was granted in the context of the prayer made by the petitioner in its application for temporary injunction before the lower Court pertaining to a direction to restrain the respondents from disconnecting supply of electricity. Therefore, there is no occasion for this Court to comment upon or to decide the issue regarding rate at which the electricity is to be supplied in these proceedings.

15. As regards the contention of the petitioner that there has been wilful violation of the order dated 30.10.2015 passed by this Court, I find that although a notice for disconnection dated 24.10.2016 was issued by the respondent no.1, there has been admittedly no disconnection of electricity supply. It has been clarified

in its submissions by the respondent no.1 that the said notice was issued more due to the anxiety of the respondent no.1 to protect its claim towards arrears that the petitioner would be liable to pay when the controversy between the parties is decided on merits. Apart from this, the said notice has been withdrawn subsequently by letter dated 24.04.2017. The respondent no.1 has also categorically stated that it would delete the amount towards principal arrears and interest in the bills being raised against the petitioner although subject to an undertaking to be given by the petitioner in the nature referred to above.

16. I find that there is no occasion for the petitioner to give any such undertaking when the entire controversy regarding the rate at which the supply of electricity is to be made to the petitioner is still at large and yet to be decided. It goes without saying that if aforesaid controversy is decided against the petitioner, it would be liable to pay the amount towards principal arrears and interest thereon. Thus, even if, the respondent no.1 deletes the amount towards principal arrears and interest thereon from the bills raised against the petitioner, it would not mean that if on merits it is found that the petitioner indeed is liable to pay such amounts, it would be absolved from doing so. This should take care of the anxiety of the first respondent as regards the amount towards principal arrears and interest thereon that it claims against the petitioner.

17. In these proceedings I do not wish to comment in any manner regarding the controversy pending between the parties on merits, but it would be in the interest of justice if such controversy is put to rest at the earliest. On the basis of the contentions raised by the parties, their pleadings and the documents on record, I do not find that the petitioner has made out a case that the respondents have committed contempt of this Court. Hence, this contempt petition is dismissed.

18. But, as stated above, it is necessary that the main controversy between the parties is decided at the earliest. Accordingly, the District Court, Nagpur, before whom Regular Civil Appeal No. 542 of 2015 is pending between the parties, is directed to decide the said appeal at the earliest and in any case within three months of a copy of this order being produced before the said Court.

JUDGE

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