IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2000 OF 2019

M/s.R.L. Steels and Energy Ltd., .. Petitioner
Gut No.78 to 81, Pangra Shivar,
Paithan Road, Chitegaon,
Aurangabad – 431 107.
Through its
Dy. General Manager (Finance)

VERSUS

1. The Chief Engineer (Commercial) .. Respondents
M.S.E.D.C.L. Prakashgad,
Plot No.G-9, Professor A.K. Marg,
Bandra East, Mumbai – 400 051.

2. The Superintending Engineer,
M.S.E.D.C.L. (Rural Circle),
Opp. Garware Stedium, Plot No.J-13,
Naregaon Road, MIDC, Chikalthana,
Aurangabad – 431 001.

3. The Secretary,
Maharashtra Electricity Regulatory
Commission (M.E.R.C.) World Trade
Center-1, 13th Floor, Cuffe Parade,
Colaba, Mumbai – 5.

Mr.B.B. Yenge, Advocate for the petitioner.
Mr.A.S. Bajaj, Advocate for respondent Nos. 1 and 2.
Mr.P.P. Uttarwar, Advocate for respondent No.3.

CORAM : PRASANNA B.VARALE &
S.M.GAVHANE,JJ.
DATED : 25.02.2019

J U D G M E N T [PER : S.M. GAVHANE,J.] : -

. Rule. Rule made returnble forthwith. With the consent of the parties, the petition is taken up for final hearing.

2. By this petition the petitioner has prayed for the following reliefs :-

> (B) To hold and declare that the Commercial Circular bearing No.312 dated 15th January, 2019 is binding on respondent Nos.1 and 2 and will be effective for the consumption of electricity for the month of January, 2019.
>
> (C) To direct the respondent No.1 to modify/revise the energy bill for the month of January, 2019 by excluding the amount of Rs.1,03,53,352/- wrongly included as against the load factor incentive and GOM subsidy for the month of December, 2018.

3. Mr. Yenge, learned Counsel for the petitioner submitted that the petitioner-company is engaged in the manufacturing of Carbon, Alloy and Special steel products in rounds, square, flats and special profiles. These products are major raw material for automobile, engineering and forging industries. These products are sold to defence, railways, automotive, agriculture, oil and gas industries etc. The petitioner is paying every month approx. Rs.5 to 6 crores energy bill to respondent Nos.1 and 2, who are the Officers of the Government of Maharashtra undertaking responsible for distribution of electricity and to look after commercial transactions of the company including raising of the bills and realization of the bills and recovery of the bills raised by the Maharashtra State Electricity Distribution Company Limited (for short "MSEDCL").

4. Mr. Yenge, learned Counsel further submitted that on 15.01.2019, respondent No.1 – Chief engineer

(Commercial) MSEDCL, had issued the impugned commercial circular No.312, regarding load factor incentive formula amendment to be applicable from 1st January, 2019. For the consumption of electricity in the month of December, 2018 the petitioner had received the energy bill to the extent of Rs.5,94,52,300/- (Five Crores Ninety Four Lacs Fifty Two Thousand Three Hundred) which the petitioner company had promptly paid on 9th January, 2019 on the due date. The petitioner company had received the energy bill for the consumption of electricity in the month of January, 2019 for Rs.7,14,43,040/- (Seven Crores Fourteen Lacs Forty Three Thousand Forty), which includes (i) Load factor incentive for Rs.49,28,028/- (Forty Nine Lacs Twenty Eight Thousand Twenty Eight) (ii) Electricity subsidy Rs.54,25,324/- (Fifty Four Lacs Twenty Five Thousand Three Hundred Twenty Four) totalling Rs.1,03,53,352/- (One Crores Three Lacs Fifty Three Thousand Three Hundred Fifty Two) as against the Commercial Circular No.312 dated 15.01.2019 issued by the respondent No.1 which is illegal, improper as the said Circular is only effective from 1st January, 2019 only and for the consumption of electricity by the petitioner for the month of January, 2019. The petitioner company has no objection for making the payment of rest of the energy bill amounting to Rs.6,10,89,688/- out of total bill of Rs.7,14,43,040/- excluding Rs.1,03,53,352/- charged by the respondent No.1 contrary to the Commercial Circular dated 15.01.2019 which is self explanatory.

5. Thus, the learned counsel for the petitioner has prayed to allow the petition and to grant reliefs claimed as referred earlier.

6. Mr.Bajaj, learned counsel for respondent Nos.1 and 2 particularly referring paragraph No.6 of reply affidavit of the said respondents submitted that the order of MERC mandates the formula of load factor incentive to be made effective from 1st January, 2019 i.e. it means that for generating the bills, the same is to be used. The MERC is well aware that the bill to be issued in the month of January is for the period of

December, 2018 and as such answering respondent was supposed to apply this formula for generating and issuing bill for December, 2018. The communication of MERC'S order was intimated vide commercial circular i.e. impugned circular dated 15.01.2019 to all concerned. By that time the bill for December, 2018 was generated and issued in 1st week of January, 2019 and as such to comply with the order of MERC and for complying with mandate and directions of MERC'S order the difference was calculated and was included in the bill for the period of January 2019 generated and issued in the Month of February 2019 as debit bill adjustment instead of issuing a supplementary bill in the month of January itself. Said activity is effected by Head office of answering respondent by making necessary amendment in its billing program so as to give effect to the revised formula of load factor intensive. Mr.Bajaj, learned counsel for respondent Nos. 1 and 2 submitted that MERC in the affidavit submitted on its behalf admitted that the impugned order of the MERC has admitted modified formula for computing Load Factor Incentive will not have any retrospective effect and will come into effect from 1st January, 2019 and accordingly, above modified formula is applicable for the electricity consumption starting from 1st January, 2019 and onward and it cannot made applicable for electricity consumption before 1st January, 2019 and therefore, in view of the said admission of respondent No.3 reliefs claimed by the petitioner can be considered.

7. In the reply affidavit of Ravindra Shivram Sonwane submitted on behalf of respondent No.3 MERC it is stated that by order dated 24.12.2018 of the MERC amended formula for load factor incentive and further it is stated that respondent commission in its said order has clearly stated that modified formula for computing Load Factor Incentive will not have any retrospective effect and will come into effect from 1st January, 2019. Accordingly, above modified formula is applicable for the electricity consumption starting from 1st January, 2019 and onward. It cannot be made applicable for electricity consumption before 1st January, 2019

8. There is no dispute that the petitioner company is consumer of the respondents MERC. The disputed bill (Exh.C) is dated 04.02.2019 and an amount as per said bill is Rs.7,20,45,530/-, due date as per said bill is 18.02.2019. This bill shows that if the amount is paid up to 11.02.2019 petitioner was to pay 7,14,43,040/- and if paid after 18.02.2019 the petitioner company was to pay

Rs.7,30,03,980/-. There is no dispute that as per this bill an amount of Rs.1,03,53,352.75/- which is disputed amount is shown as debit bill adjustment.

9. There is no dispute that out of bill amount of Rs.7,14,43,040/- as per Exh.C dated 04.02.2019 the petitioner company has no objection to pay Rs.6,10,89,688/- and the petitioner has dispute about Rs.1,03,53,352/- which amount is debit bill adjustment in said bill. According to the petitioner as per commercial circular dated 15.01.2019 (Exh.A) issued by respondent No.1 revision in formula is applicable from 01.01.2019 and hence when the said formula is prospective in the application, said formula would apply for the electricity consumption starting from January, 2019 and onward and it cannot be made applicable to the petitioner. As referred earlier in paragraph No.6 (supra) respondent No.3 in affidavit-in-reply stated that by order dated 24.12.2018 respondent Commission has amended the formula for computing load factor incentive stating that modified formula for computing load factor will not have any retrospective effect and will come into effect from 01.01.2019 and that said formula is applicable for electricity consumption starting from 01.01.2019 and onward. Moreover, it is stated in the affidavit that said

formula cannot be made applicable for electricity consumption before 1st January, 2019.

10. Considering the aforementioned contents of the affidavit-in-reply of respondent No.3 and the contention of the petitioner that the petitioner is not liable to pay disputed amount of Rs.1,03,53,352/-, we find substance in the contentions of the petitioner and at the same time *prima facie* we find that respondent Nos.1 and 2 have some grievance in respect of decision of respondent No.3 MERC and said respondents have remedy against the decision of MERC before the forum established and as such the petition needs to be allowed with some directions. Therefore, following order is passed.

ORDER

A] The writ petition is allowed.

B] we further make it clear that if respondent Nos. 1 and 2 have any grievance in respect of the decision of respondent No.3 MERC and if a remedy is available for respondent Nos.1 and 2 to challenge the decision of MERC before the forum so established, respondent Nos. 1 and 2 are at liberty to avail such a remedy.

C] The petitioner has deposited the disputed amount under protest. Accordingly, the same be adjusted for the energy bill to be issued to the petitioner for February, 2019. Needless to state that in view of allowing the petition, the petitioner is also entitled for continuation of the benefits like incentives and subsidy.

[S.M.GAVHANE,J.] **[PRASANNA B.VARALE,J.]**

VishalK/wp2000.19