IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14215 OF 2018

1. The Executive Engineer @
Nodal Officer,
The Maharashtra State Electricity
Distribution Co. Ltd, Circle Office
Kolhapur.

2. The Executive Engineer
The Maharashtra State Electricity
Distribution Co. Ltd,
Rural Division-1, Kolhapur.

3. Dy. Executive Engineer
The Maharashtra State Electricity
Distribution Co. Ltd,
Sub Division, Gaganbawada … Petitioners.

Versus

. Mrs. Sarika Dilip Banchhode
Gat No.99, Balewadi,
Post Madukali, Tq.Gaganbawada,
Address : Plot No.100,
Rukar Colony, Kolhapur. … Respondent.

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Mrs. A.R.S. Baxi for Petitioners.
Mr Vinod P. Sangvikar a/w Yogesh P. Morbale, Advocates for the Respondents.

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CORAM : V.L. ACHLIYA, J.

DATED : 25th FEBRUARY, 2019

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at the stage of admission.

2. By the present petition under Article 226 and 227 of the Constitution of India, the petitioners have challenged the order dated 03.02.2018 passed by the Consumer Grievance Redressal Forum, Kolhapur Division, Kolhapur (for short, 'CGRF') in Case No.26/2017-2018 (Sau. Sarika Dilip Banchhode Vs. Executive Engineer, MSEDCL, Circle Office, Kolhapur & Ors.). By the impugned order, the CGRF allowed the complaint filed by the respondent and directed the petitioners to pay Rs.33,53,160/- within one month from the date of order with interest at the rate of 7% p.a. Over the said amount w.e.f. May, 2016 till payment of said amount. Being aggrieved, the petitioners have preferred this petition.

3. Before adverting to appreciate the submissions advanced, it is useful to refer few facts leading to filing of this Petition.

4. The Maharashtra State Electricity Distribution Company Limited (for short 'MSEDCL') is a electricity distribution company constituted under the provisions of Maharashtra Electricity Act, 2003. It deals in the business of supply and distribution of electricity within the State of Maharashtra. By circular bearing No. CE(Dist)/D-III/Circular/22197 dated 20.05.2008 issued by MSEDCL, the guidelines were issued for releasing new connections and augmentation. The guidelines were laid down with an object to

streamline the procedure for levying charges for releasing/upgrading electricity connections and to avoid different subjective interpretation applied by the field staff. In order to avoid hardship to prospective consumers and to follow uniform practice throughout the State as well as to remove the difficulties in release of new connections, the guidelines were framed. In terms of guidelines framed by the MSEDCL for securing L.T. agriculture supply under the Non-DDF (Non Dedicated Distribution Facility), it was provided that if the consumer/group of consumers wants early connections and opts to execute the work and bears the cost of infrastructure then the cost of infrastructure will be refunded by way of adjustment through energy bills.

5. The respondent having agriculture land bearing Nos. 77, 81 and 99 at Balewadi, village Patilwadi (Madukali), Tq. Gaganbawada, Dist. Kolhapur, submitted application for providing the four electricity connection of 100 H.P. Load to irrigate her said agriculture lands. She made an application for supply of electricity from L.T. Agriculture category under Non-DDF category. By four separate orders the four electricity connections were approved to her under Non-DDF category. Under the Non-DDF scheme framed by the MSEDCL, the consumers were required to incur the expenses of entire work of infrastructure development as well the cost of installation. As per the scheme in force, the cost of

infrastructure and installation incurred by the consumers to be refunded by MSEDCL through adjustment in energy bills of electricity consumed to be issued to such consumers after the supply connected to electrical installation made by consumers. According to respondent, she has incurred an expenditure of Rs.33,53,160/- for infrastructure and providing electric installation in her agriculture fields. After completing the infrastructure and installation work in the year 2015, the respondent requested the petitioners to connect the electricity supply to her agriculture fields. However, the electricity supply was connected on 20.04.2016. The respondent was communicated by letter dated 29.02.2016 that in case she claim refund of the amount spent by her under the Non-DDF scheme, then same will be treated as act of breach of condition and electricity supply provided to her will be disconnected. On 25.01.2018, the respondent filed complaint before the Consumer Dispute Redressal Forum at Kolhapur. By order dated 17.04.2017, the said Forum has rejected the complaint. Being aggrieved, the respondent challenged the said order before the CGRF, Kolhapur Division, Kolhapur. By order dated 03.02.2018, the CGRF Kolhapur Division, Kolhapur allowed the complaint of the complainant/respondent and pass the order as referred above. Being aggrieved, the petitioners have preferred this petition.

6. Ms. Baxi, the learned counsel for the petitioner assailed the impugned order with contention that the order has been passed in complete ignorance of Non-DDF scheme under which the electricity connections were provided to the respondent. It is submitted that in terms of Clause 14 of the terms and conditions of Non-DDF scheme, it is expressly provided that the cost of actual quantity of material used as per the estimated rate only be refunded through energy bills. It is submitted that the impugned order passed by CGRF, Kolhapur Division, Kolhapur, directing the petitioner to pay the amount in lumpsum that too with interest is contrary to scheme under which the electricity connections were sanctioned to the respondent. It is submitted that the order to make the payment in lumpsum as well as to pay the interest at the rate of 7% p.a. over the amount awarded with effect from May, 2016 is not sustainable in law as same is totally contrary to scheme and agreement entered between petitioners and respondent

7. On the other hand, Mr. Sangvikar, the learned counsel for the respondent supported the order passed by the CGRF, Kolapur Division, Kolhapur. It is submitted that the bills of electricity consumed by respondent on account of all the four electricity connections is not more than Rs.50,000/- per year and it would take more than 80 years to adjust the amount to be refunded by way of adjustment through energy bills to be issued to

respondent. Consideration this fact the order to pay the entire amount together with interest has been passed by CGRF, Kolapur Division, Kolhapur.

8. I have carefully considered the submissions advanced in the light of the Non-DDF scheme under which four electricity connections are provided to the respondent. The terms and conditions of the said scheme are as under:-

> "1. The work shall be executed as per M.S.E.D. Co. Ltd.'s standard REC specifications only.
>
> 2. The material to be used should be got approved from this office/Assistant Engineer, before execution.
>
> 3. The work will be supervised by our Assistant Engineer/Junior Engineer concerned.
>
> 4. Meter and service connection material will be supplied by the Company.
>
> 5. Joint inventory of the above work alongwith respective Assistant Engineer, has to be taken for handing over the asset to M.S.E.D. Co. Ltd., after completion of work.
>
> 6. Xerox copy of purchases receipts of material used shall be submitted to Assistant Engineer.
>
> 7. Name of firm/Electrical Contractor to whom the work will be entrusted alongwith License No. and Certificate of Regulation of the contractor to execute the work one electrical contracts and an experience certificate regarding supply cum erection of H.T. and L.T. lines and his duly affidavited consent on Rs.100/- Stamp paper there of to execute the work be submitted to this office.
>
> 8. Tapping point of supply line will be shown by Assistant Engineer / Junior Engineer.
>
> 9. Assistant Engineer / Sectional Officer will issue firm quotation for payment.

10. Prior Permission should be obtained from this office before starting the work.
11. Minimum 1 year guarantee on Rs.100/- Stamp paper should be given for material used by the contractor.
12. The work executed along with material used by you will be the property of M.S.E.D. Co. Ltd.
13. The created infrastructure under the private erection shall be got approved and passed from the Electrical Inspector, I./E. and L. Department for commissioning by the applicant, the risk and cost and certificate to that effect shall be submitted to concerned.
14. **The cost of actual quantity of material used as per the estimated rate only be refunded through energy bill.**

9. Thus, if we consider the over all scheme noted above under which four electricity connections were sanctioned to the respondent then the fact is not in dispute that the terms and conditions as stated above are binding upon the petitioners as well as the respondent. In terms of the scheme, which was framed with an objective to provide electricity connections to the person interested and requiring electricity connection on providing the obligation has been casted upon such person to borne expenditure of infrastructure and installation and then claim the refund by way of adjustment through the energy bills to be issued to such persons.

10. The guidelines circulated by the MSEDCL vide circular dated 20.05.2008 in respect of L.T. consumers reads as under:-

Sr. No.	Particulars	Recovery of charges
1	1.1 LT Non-domestic, LT residential consumers, consumers or group of LT consumers of Non-domestic & Residential complex where the load is less than 500 KVA and, located within the limits of Areas "A" and "B". 1.2 All LT agriculture consumers **1.3 All LT industrial individual or group consumers.**	a) All the infrastructure will be created by MSEDCL & only Schedule of Charges as approved by MERC order dated 8th September ' 2006 (case no. 70/2005) will be recovered **b) If the consumer/ group of consumers wants early connections and opts to execute the work and bears the cost of Infrastructure then the refund of the cost of infrastructure will be given by way of adjustment through energy bills.** c) While releasing load in complex/s and where DTC is required to be established in that complex, the provision for land to accommodate DTC shall be made available by the developers from the space earmarked for amenities and public utilities be made available to MSEDCL on non chargeable basis by developer / owners.
2	...	...
3.	...	...

11. If we consider the guidelines framed by the MSEDCL as well as terms and conditions of Non-DDF scheme as referred above, then the person who has applied and secure the electricity connections under the Non-DDF scheme, is entitled to claim refund of the amount incurred towards the infrastructure and the

installation carried out for bringing the supply of electricity to his/her field for establishment Only by way of adjustment through energy bills issued to such person. The person to whom the electricity connection is sanctioned under the Non-DDF account scheme is entitled for the refund of cost of actual quantity of material used as per the estimated rate through the adjustment to be made in the energy bills, which are issued after electricity supply is connected. Thus, the impugned order passed by the CGRF, Kolhapur Division, Kolhapur is perverse and same is not in consonance with the terms and conditions of the Non-DDF scheme under which the electricity connections was provided to the respondent. In that view, the contention of the learned counsel for the petitioners that the impugned order is passed in complete ignorance of Non-DDF scheme under which electricity connections were sanctioned to the respondent deserves to be accepted. I therefore hold that the order passed by the CGRF, Kolhapur Division, Kolhapur directing the petitioner to pay the amount of Rs.33,53,160/- in lumpsum with interest @ 7% p.a. To respondent is not sustainable in law and liable to be set aside.

12. Since the challenge raised in the petition confines to order directing the petitioners to pay the amount in lumpsum, it is not necessary for this Court to examine the correctness of amount as claimed by respondent towards cost of installation and

infrastructure incurred by respondent.

13. Looking to the fact that on account of electricity consumption charges to be payable by the respondent towards all the four electricity connections provided claimed to be not more then Rs.50,000/- per year, it will take more than 50 years to refund the amount by way of adjustment in the electricity bills. In that view, the order needs to be suitably modified to protect the interest of petitioners as well as the respondent. In the facts and circumstances of the case, it would be expedient to direct the petitioners to pay 50% of the amount of cost incurred by respondent in lumpsum and pay the balance amount by giving adjustment through the electricity energy bills to be issued to respondent in terms of its scheme. I, therefore, pass the following order:-

ORDER

[i] The impugned order dated 03.02.2018 passed by Consumer Grievance Redressal Forum, Kolhapur Division, Kolhapur in Case No.26/2017-2018 is set aside.

[ii] The petitioners are directed to pay 50% of the amount of cost of installation incurred by respondent to her in lumpsum within 12 weeks from the date of this order and pay the balance amount of 50% by way of adjustment through the energy bills to

be issued to respondent including bills, if any, remain to be unpaid from the date of providing electricity connections to respondent.

14. Rule made absolute in above terms. With no order as to costs.

(V.L. ACHLIYA)
JUDGE