IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7210 OF 2019

Mr.Suraj Ashok Nikam … Petitioner
V/s.
Electricity Ombudsman, Mumbai and ors.… Respondents

Mr.M.B.Deshmukh, Advocate for the Petitioner.
Mr.Kiran Gandhi i/by M/s Little &Co., Advocate for Respondent Nos.3 and 4.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 15, 2019.

P.C.:-

1. Heard Mr.M.B.Deshmukh, learned counsel for the petitioner and Mr.Kiran Gandhi, learned counsel for respondent Nos.3 and 4.

2. This petition has been filed under Articles 226 and 227 of the Constitution of India seeking interference in the order dated 6th July, 2018 passed by the Electricity Ombudsman, Mumbai, respondent No.1, to the extent of not granting adequate compensation to the petitioner

and further seeks a direction to respondent Nos.3 and 4 to provide adequate compensation to the petitioner in terms of the Electricity Act, 2003 and the Maharashtra Electricity Regulatory Commission (Standard of Performances of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2014.

3. Facts are not in dispute. However, for the sake of adjudication of the writ petition, the same are recapitulated herein briefly.

4. Petitioner with a view to start a new industrial unit applied for electricity connection before respondent No.3. Following the procedure prescribed, petitioner deposited the due amount before respondent No.3. Petitioner has stated that for establishing the industrial unit he had availed huge loan from the bank.

5. Despite petitioner fulfilling all the formalities, electricity connection was not provided to the industrial

unit of the petitioner by respondent Nos.3 and 4. In this connection, petitioner submitted a written application to respondent No.4 on 30th June, 2017.

6. In view of the inordinate delay by respondent Nos.3 and 4 in providing electricity connection to the industrial unit of the petitioner because of which it could not be made operational thereby resulting in loss, he approached the Internal Consumer Grievances Redressal Cell by filing an application dated 2nd November, 2017. Internal Consumer Grievances Redressal Cell passed order dated 30th December, 2017, wherein it was mentioned that petitioner had paid the due amount for electricity connection on 6th February, 2015 and his name figured at Serial No.1 of the list prepared serial-wise for providing electricity connection. Therefore, direction was issued to respondent Nos.3 and 4 to provide electricity connection as per seniority of the petitioner.

7. Not being fully satisfied with the aforesaid order, petitioner approached the Consumer Grievances

Redressal Forum, Kolhapur vide application dated 11th January, 2018. The application was contested by respondent No.3.

8. Consumer Grievances Redressal Forum, Kolhapur thereafter passed the order dated 5th April, 2018 directing respondent Nos.3 and 4 to provide electricity connection to the industrial unit of the petitioner within two months and for the delay in providing electricity connection, to pay Rs.1,000/- per day from 5th June, 2018 till the date when electricity supply was actually provided.

9. In the course of the hearing it is admitted that electricity connection was provided to the industrial unit of the petitioner on 30th September, 2018.

10. Learned counsel for the petitioner has referred to section 43 of the Electricity Act, 2003, more particularly sub-section (1) and sub-section (3) thereof and contends that a distribution licensee is required to supply electricity to a consumer within one month of the receipt

of the application and in case of failure to provide electricity within the aforesaid period, the distribution licensee shall be liable to a penalty extending upto Rs.1,000/- for each day of default. He therefore submits that the penalty of Rs.1,000/- per day was required to be computed by respondent No.1 from expiry of one month from the date of application submitted by the petitioner for providing electricity. This is a fundamental error committed by the respondents. He further submits that petitioner is entitled to compensation in terms of Regulation 17.15 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, briefly the 2006 Regulations hereinafter. Therefore, court may direct the respondents to compensate the petitioner in the light of the statutory provision.

11. On the other hand, learned counsel for respondent Nos.3 and 4 supports the order passed by the respondent No.1 and contests that Consumer Grievances Redressal Forum while directing respondent

Nos.3 and 4 to provide electricity connection to the industrial unit of the petitioner before 5th June, 2018, also imposed penalty of Rs.15,200.00 for the delay in providing electricity connection from 6th February, 2015 to 5th June, 2018. He therefore submits that there is no error or infirmity in the orders passed by the authorities below and no interference is called for.

12. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

13. From the materials on record it is seen that petitioner had submitted application before respondent Nos.3 and 4 for providing electricity connection to his industrial unit on 31st December, 2014. Respondent No.3 had given quotation on 19th January, 2015; thereafter petitioner deposited the due amount on 6th February, 2015. The Test Report was handed over on 10th February, 2015.

14. Having taken note of the undisputed facts as above, section 43 of the Electricity Act, 2003 may now be adverted to. Section 43 reads as under:-

> "Section 43. (Duty to supply on request): --- (1) 1[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:
>
> Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:
>
> Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.
>
> [Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]
>
> (2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :
>
> Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he

> has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.
>
> (3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

15. As per sub-section (1), it is the duty of every distribution licensee to provide electricity within one month from the date of receipt of an application by the owner or occupier of any premises. As per the two proviso, the period of one month as above can be extended to meet the circumstances as contemplated thereunder. Under sub-section (3), if a distribution licensee fails to supply electricity within the aforesaid period, he shall be liable to penalty which may extend to Rs.1,000/- for each day of default.

16. Pausing here for a moment, what sub-section (3) visualizes is a provision for penalty on a distribution licensee if he fails to provide electricity within the period(s) specified as well as the quantum of penalty. It

is trite that penalty is not and cannot be equated with compensation. Penalty is a kind of punishment which visits the distribution licensee on its failure to provide electricity within the period(s) specified. On the other hand, compensation would be compensatory amount to enable the consumer to recoup the loss sustained by him for failure of the distribution licensee to supply electricity within the period(s) specified. Therefore, there is a fundamental difference between the two.

17. Though use of the expression “shall” in sub-section (3) would convey that the provision is obligatory in nature, thereby ensuring imposition of penalty as an automatic consequence of the default, there is however an element of discretion in the quantum of penalty that may be imposed. Sub-section (3) provides that the quantum of penalty may extend to Rs.1,000/- for each day of default. Therefore, the authority imposing the penalty has to apply its mind while quantifying the amount of penalty which may extend to Rs.1,000/-.

18. In so far Consumer Grievances Redressal Forum is concerned, it passed an order on 5th April, 2018 directing respondent Nos.3 and 4 to provide electricity connection to the industrial unit of the petitioner before 5th June, 2018 and as a consequence of the default, directed payment of an amount of Rs.15,200.00 for the period from 6th February, 2015 to 5th June, 2018, when the electricity connection was directed to be provided.

19. When this matter was carried over to respondent No.1, he passed the order dated 6th July, 2018, directing payment of Rs.1,000/- as "Compensation" to be paid by respondent Nos.3 and 4 from 5th June, 2018 till actual date of supplying electricity. As noticed above, electricity was provided to the industrial unit of the petitioner on 30th September, 2018. Therefore, the above penalty would be applicable for the period from 5th June, 2018 to 30th September, 2018.

20. In the above context, court finds no good ground to interfere with the order passed by the respondent No.1

on 6th July, 2018, though a view can be taken that respondent No.1 had automatically imposed penalty (termed as “compensation”) of Rs.1,000/- per day on respondent Nos.3 and 4 without application of mind. However, since this imposition of penalty is not under challenge by respondent Nos. 3 and 4, court would not like to go into this aspect of the matter.

21. In so far the claim under Regulation 17.15 of the 2006 Regulations is concerned, it may be mentioned that Regulation 17 deals with proceedings before the Electricity Ombudsman. Clause (15) thereof provides that the order passed by the Electricity Ombudsman should set-out those aspects as per sub-clauses (a) to (f). As per sub-clause (e), compensation may be awarded to the consumer for any loss or damage suffered by him. But the proviso makes it very clear that in no case the consumer shall be entitled to indirect, consequential, incidental, punitive or exemplary damages, loss of profits or opportunity. Therefore, the proviso itself effectively debars the petitioner from seeking any compensation for

the alleged loss suffered by him on account of the delayed electricity connection.

22. That being the position, Court finds no merit in the Writ Petition. Writ Petition is accordingly dismissed.

(UJJAL BHUYAN, J.)

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