

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7149 OF 2019

Maharashtra State Electricity Distribution Company
Limited thru its Additional Executive Engineer ... Petitioner
Vs.
Mohammad Sajid Haji Sardar ... Respondent

Mr. Rahul Sinha i/b. DSK Legal for Petitioner.
Mr. Tushar Sonawane for Respondent.

CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 13, 2019

P.C. :

Heard Mr. Sinha, learned counsel for the petitioner and Mr. Sonawane, learned counsel for the respondent.

2. By filing this petition under Articles 226 / 227 of the Constitution of India, petitioner has challenged the legality and correctness of order dated 10.10.2018 passed by the Consumer Grievance Redressal Forum, Kalyan Zone on a grievance raised by the respondent against the petitioner for quashing the bill raised by the petitioner.

3. Respondent is a consumer under the petitioner which is an electricity distribution licensee. According to the petitioner, respondent was consuming electricity since the year 2009 for operating an electric meter for lifting of water. Initially respondent was charged for industrial use of electricity but subsequently upon inspection made by officials of the petitioner, the use of electricity was changed to commercial.

4. Following such inspection, initially a proceeding was initiated against the respondent under Section 126 of the Electricity Act, 2003. But subsequently, the said proceeding was dropped whereafter a revised bill was raised against the respondent for the period from June, 2009 till

February, 2018 by treating the respondent as a commercial consumer. Be it stated that the revised bill pertained to the differential amount between what was charged earlier and the amount alleged to be due upon change of user.

5. This was challenged by the respondent by raising a grievance before the Consumer Grievance Redressal Forum. By the order dated 10.10.2018, grievance of the respondent was accepted and the bill raised by the petitioner towards retrospective recovery was set aside.

6. Aggrieved, present writ petition has been filed.

7. From a perusal of the order dated 10.10.2018, it is seen that an inspection was carried out by the officials of the petitioner in the premises of the respondent. Upon such inspection, a view was taken that the consumer i.e., the respondent was not properly classified. He was initially incorrectly classified as industrial and upon inspection, he was re-classified as a commercial consumer. Therefore, the differential amount between industrial consumer and commercial consumer for the aforesaid period was raised by the petitioner. Consumer Grievance Redressal Forum held that in a case of re-classification, retrospective recovery cannot be allowed and accordingly, the bill raising retrospective dues was set aside.

8. In *Maharashtra State Electricity Distribution Company Limited Vs. Electricity Ombudsman*, **Writ Petition No.10764 of 2011** and other connected cases decided on **12.03.2019**, a Full Bench of this Court was confronted with three issues out of which issue No.1 is relevant which is as under:

“(i) Whether irrespective of the provisions of Section 56(2) of the Electricity Act, 2003, Distribution Licensee can demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges;”

9. After elaborate consideration, Full Bench answered the said issue in the negative and held that a distribution licensee cannot demand charges for consumption of electricity for a period of 2 years preceding the date of the first demand of such charges.

10. This Court in the proceedings held on 26.07.2019 took note of the submissions made by learned counsel for the petitioner that the order passed by the Consumer Grievance Redressal Forum was contrary to the Full Bench decision. This Court while issuing notice directed him to submit a statement for a period of two years going backwards from February, 2018 i.e., for the period from February, 2016 to January, 2018. This Court further took note of the submissions of learned counsel for the petitioner that petitioner would restrict its claim only to the extent of challenge to the order of adjustment passed for the said period i.e., from February, 2016 to January, 2018 in view of the law laid down by the Full Bench.

11. Today when the matter is called upon, Mr. Sinha has produced before the Court a statement disclosing the tariff differential in respect of the respondent from industrial to commercial use for the period from February, 2016 to January, 2018. As per the statement, the differential amount is Rs.4,77,337.90. He submits that the petitioner would confine its claim to this amount only for the aforesaid period.

12. Learned counsel for the respondent however submits that even the said claim is also not permissible. It is not a case of unauthorized consumption of electricity. Respondent was consuming electricity as an industrial consumer right from the beginning and had paid the dues as and when raised. Petitioner cannot unilaterally change user of respondent from industrial to commercial and thereby raise a higher bill retrospectively. He therefore, submits that irrespective of whether the period is from 2009 to 2018 or from February, 2016 to January, 2018, the reasonings given by the Consumer Redressal Forum cannot be

faulted and no case for interference is made out.

13. Submissions made by learned counsel for the parties have been considered; also perused the materials on record.

14. Since the entire dispute centers around Section 56 of the Electricity Act, 2003, more particularly sub-section (2) thereof, it would be apposite to advert to the same at the outset. While sub-section (1) empowers a licensee or the generating company to disconnect supply of electricity to a consumer in case of default in the payment of defaults, sub-section (2) provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer under Section 56 shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut-off supply of the electricity.

15. A careful perusal of sub-section (2) of Section 56 would go to show that the licensee or the generating company is debarred from recovering any sum due from a consumer after a period of two years from the date when such sum became first due. The exception to this is that the licensee or the generating company should show such sum as continuously recoverable as arrears of charges.

16. From the order dated 10.10.2018 what is discernible is that according to the petitioner right from inception, respondent was consuming electricity not for industrial purpose but for commercial purpose. Supply was given in the year 2009 but the bill for commercial use was raised on 15.09.2017. There is nothing on record to show that petitioner has been raising bill continuously upon the respondent as a commercial consumer prior to 15.09.2017. If the contention of the petitioner is accepted, then respondent was required to be charged as a commercial consumer from the year 2009 itself. The period of two years

expired in 2011. But bill as commercial consumer was first raised on 15.09.2017. Section 56(2) bars recovery of any sum due from a consumer beyond a period of two years when such sum first became due. Therefore, to retrospectively charge the respondent as a commercial consumer from the year 2009 in the year 2017 would not be justified. It is not a case where respondent had surreptitiously consumed electricity for commercial purposes though he was charged as industrial consumer.

17. However, petitioner would be entitled to raise bills upon the respondent as commercial consumer prospectively from the date when user category of the respondent was altered from industrial to commercial. That being the position, no interference is called for in the impugned order. Consequently, Court finds no merit in the writ petition.

18. Writ Petition is accordingly dismissed.

(UJJAL BHUYAN, J.)

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