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

CAO NO. 801/2018
IN
M.C.A. (ST.) NO. 9498/2018
IN
WRIT PETITION NO. 5350/2015 (D)

Central India Detergent
..VS..
MSEDCL & anr.

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

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Shri T.D. Mandlekar, Advocate for the applicant
Shri S.V. Purohit, Advocate for the non-applicants

CORAM : Z.A.HAQ, J.
DATED : 30/04/2019

The original respondent no. 1 – Central India Detergent has filed an application seeking review of the judgment passed in Writ Petition No. 5350/2015 on 09/02/2018. According to the respondent no. 1 – Central India Detergent, the review application should have been filed within 30 days, however, it is filed after 70 days, and therefore there is delay of about 40 days in filing the review application. Hence, this application is filed praying that the delay in filing the review application be condoned.

In the order passed by this Court in Civil Application (CAO) No. 44/2018 in M.C.A. (ST.) No. 17327/2017 in Writ Petition No. 4974/2014 on 04/04/2018, it is held that the provisions of Article 124 of the Limitation Act cannot govern the proceedings under Article 226 of the Constitution of India, and the application seeking review of the judgment delivered in the writ petition filed under Article 226 of the Constitution of India will also be under Article 226 of the Constitution of India. There is no question of limitation in filing the review application. Hence, this application should not have been filed. It is **disposed** accordingly.

MISC. CIVIL APPLICATION (ST.) NO. 9498/2018

Taken up for hearing.

The original respondent no. 1 – Central India Detergent claims that its activity of storage of ice-cream will fall under LT-V category which is applicable for the industrial use, however, the original petitioner i.e. MSEDCL is wrongly claiming that the activity of the respondent no. 1 – Central India Detergent will fall under LT-II category which applies to non-residential or commercial users, and is applying the tariff accordingly.

The advocate for the original respondent no. 1 – Central India Detergent has submitted that as per Section 2 (k) (vi) of the Factories Act, preserving or storing any article in cold storage will fall under "manufacturing process" and as the original respondent no. 1 – Central India Detergent is utilizing the power supply for the operation of the machinery used for storage of the ice-cream and allied products, tariff will have to be as per LT-V category of the circular.

It is submitted that MSEDCL could not have taken re-course to Section 126 of the Electricity Act, 2003 (for short "the Act of 2003") as there is no allegation of theft or user of any gadgets in extracting the electricity unauthorizedly as explained in Explanation (b) below Sub-section 6 of Section 126 of the Act of 2003. It is submitted that the flying squad has not adhered to the norms laid down in Clause 8.3 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (for short "the Regulation of 2005").

It is argued that as the advocate representing the respondent no. 1 – Central India Detergent was not present when the writ petition was taken up for hearing, the above points could not be pointed out and it has materially affected the decision of the writ petition.

The learned advocate for the original petitioner – MSEDCL has relied on the agreement between Rajat Industries and Dinshaw Dairy Foods Limited. It is submitted that the original respondent no. 1 – Central India Detergent is the licensed user and the flying squad found that the premises were being used by Rajat Industries and further inquiry showed that Rajat Industries used the premises of the respondent no. 1 – Central India Detergent for carrying out its activities as per the agreement between Rajat Industries and Dinshaw Dairy Foods Limited dated 16/04/2009. The learned advocate has pointed out Clause 1 and Clause 7 (a) of the above referred agreement and has argued that these clauses make it clear that Rajat Industries was carrying out the activity of sale of ice-cream, and therefore the bill was rightly issued applying LT-II category of the tariff order. It is submitted that the sale of ice-cream will fall under commercial activity and will not fall under manufacturing activity.

After considering the facts of the case, I find that the submission made on behalf of the original respondent no. 1 – Central India Detergent, relying on Clause 8.3 of the Regulation of 2005, is mis-directed.

Clause 8.3 of the Regulation of 2005 only lays down the guidelines for the authorized representative/representatives of the MSEDCL that while seeking entry into the consumer's premises, they should have the name tag which should be visibly displayed and should produce for scrutiny, proof of identity or authorization of the Distribution Licensee and shall inform the consumer, the reason for the entry into the premises. If further lays down that the authorized representative shall also carry the job sheet or work order setting out the work required to be done and show the same to the consumer before entering into the premises. Non-compliance of any part of this clause will not render the entire procedure illegal or ineffective. Apart from the fact that the argument made on behalf of the original respondent no. 1 – Central India Detergent cannot be accepted, on facts, the learned advocate for the original petitioner – MSEDCL has pointed out that all the required compliances were made and joint inspection report shows the signature of the consumer also.

As far as the argument based on Section 126 of the Act of 2003 is concerned, again it is mis-conceived as Section 126 (1) of the Act of 2003 which enables the Assessing Officer to examine whether the consumer is indulging in unauthorized use of electricity, and in the present case, it is found that the consumer had been using the electricity for the commercial activity and not for the industrial activity as shown by the consumer, and the action of the Assessing Officer to assess the charges payable by the consumer cannot be faulted with. The learned advocate for the original petitioner – MSEDCL has rightly pointed out Clause (iv) below Sub-section 6 of Section 126 of the Act of 2003 which provides that the use of electricity for the purpose other than for which the usage of the electricity was authorized, would be “unauthorized use of electricity”.

The submission made on behalf of the original respondent no. 1 – Central India Detergent relying on Section 2 (k) (vi) of the Factories Act, also cannot be accepted in the facts of the present case. The agreement between Rajat Industries and Dinshaw Dairy Foods Limited shows that Rajat Industries is granted bulk distributorship for sale of ice-cream. There is nothing in the agreement to show that Rajat Industries agreed to undertake part of the activity of manufacturing of ice-cream. All such issues relating to the facts cannot be examined by this Court, at this stage.

After examining the submissions made on behalf of the original respondent no. 1 – Central India Detergent, it cannot be said that there is any apparent error on the face of record which necessitates review of the judgment delivered in W.P. No. 5350/2018.

Hence, the miscellaneous civil application is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari