

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.46 of 2017

- 1). The State of Goa
Through Chief Secretary
Having its Office at Secretariat
Goa Legislative Assembly Complex
Porvorim, Goa.

- 2). The Chief Electrical Engineer,
Department of Electricity,
Government of Goa,
Through Assistant Engineer,
Electrical Sub-Division II(U)
Commercial,
With Office at:
1st Floor, Vidyut Bhavan,
Panaji, Goa.

...Appellants

Versus

Travel Corporation ((India) Ltd.,
Company duly incorporated under
the Companies Act, 1956
With its registered office at;
Chander Mukhi, 1st Floor,
Nariman Point, Mumbai,
and having Branch office at:
101, City Centre, 19, Patto Plaza,
Panaji, Goa,
Through its authorized representative
Mr. Prasad Harmalkar,
Senior Manager-Leisure Travel (Inbound).

.... Respondents.

Mr. Tanya Ferreira, Advocate holding for Ms. Amira Razaq, Government Advocate for the appellant.

Mr. Sudesh M. Usgaonkar, Advocate for the Respondent.

Coram : M. S. SONAK, J.

Date : 15th October, 2020

ORAL JUDGMENT:

This matter was called out in the morning session and posted in the afternoon session in order to enable the learned Government Advocate to appear in the matter. In the afternoon session, Ms. Tanya Ferreira, learned Counsel holding for Ms. Amira Razaq, states that Ms. Razaq is unable to connect to the video-conferencing facility.

2. This appeal was admitted by order dated 16.01.2018 and the said order reads as follows:

'Heard Ms.Amira Abdul Razaq, learned counsel for the appellants.

2. This Court, in a case of Maharashtra State Electricity Distribution Company Ltd.Vs. Electricity Ombudsman and another reported in 2012 (6) Bombay Cases Reporter 605, on the aspect of Section 56 (2) of the Electricity Act referred the case to a larger bench.

3. Since identical question is involved in the

present appeal from order, it would be, in the interest of justice that till the decision of the Full Bench is delivered, the matter needs to be kept in abeyance.

4. The appeal is admitted.

5. Mr. S.M.Usgaonkar, learned counsel waives notice on behalf of the respondent.

6. All the issues and contentions including maintainability are kept open.

7. Stand over to 28th March, 2018.'

3. Thereafter, by orders dated 25.06.2018, 29.08.2018 and 22.10.2018, the matter was adjourned at the joint request of the learned Counsel for the parties by pointing out that the issue was still pending before the Full Bench.

4. Now, Mr. Usgaonkar has placed on record the decision of the Full Bench in the case of ***Maharashtra State Electricity Distribution Company Ltd v/s. Electricity Ombudsman & Ors.¹***.

5. The Full Bench, in paragraph 79, has answered the issues framed for its consideration in the following manner:-

'79. As a result of the above discussion, the issues referred for our opinion are answered as under:

(A) The issue No.(i) is answered in the negative.

¹ 2019 (3) BCR 1.

The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

(B) As regards issue No.(ii), in the light of the answer to issue No.(i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.

(C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.'

6. From the aforesaid, it is quite clear that the Full Bench, has accepted the view that the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges unless, of course, the condition set out in Section 56(2) of the Electricity Act, 2003 is satisfied.

7. The order impugned in this case is only the interim order. The learned Trial Judge's view is, at least, prima facie, in accord with the view now taken by the Full Bench of this Court. This appeal was

admitted only because there were conflicting views in the matter. Now that this conflict is resolved, there is no point in keeping this appeal pending.

8. The suit in which the impugned order came to be made was itself instituted in the year 2014. After the impugned order was made, it is not as if there was any interim relief operating in this appeal.

9. For the aforesaid reasons, this appeal is disposed of. Further, the learned Trial Court, is directed to dispose of the Civil Suit No.39/2014 expeditiously. In so disposing of the suit, the learned Trial Court, need not be influenced by any of the observations in the impugned order or for that matter, the observations in the present order. All such observations are only, prima facie, for the purpose of deciding issues of interim relief. The suit will have to be decided on its own merits and in accordance with the evidence the parties place before the learned Trial Court.

10. With the aforesaid clarifications, this appeal is disposed of. There shall be no order as to costs.

M. S. SONAK, J.