Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 390 OF 2020

Maharashtra State Electricity Distribution Co. Ltd. ... **Petitioner**
Vs.
M/s. Pan India Network Infravest Ltd. ... **Respondent**

Mr. Rahul Sinha a/w. Ms. Prerna Gandhi i/b. DSK Legal for the petitioner.
Ms. Nilima Sanglikar for the respondent.

CORAM : G.S.KULKARNI, J.
DATE : 30 July 2020
(Through Video Conference)

P.C.

Heard learned counsel for the petitioner and learned counsel for the respondent. The challenge in this petition filed under Articles 226 and 227 of the Constitution of India is to an order dated 18 December 2018 passed by the Consumer Grievance Redressal Forum, Mumbai constituted under section 42 of the Electricity Act, 2003. The respondent is a consumer, who is engaged in Information Technology activity. The respondent was granted a supply sanctioned for I.T./I.T.E.S. by the petitioner. There is no dispute that at all relevant times the respondent was categorized as consumer entitled to the benefit of industrial tariff, being in Information Technology industry as per the policies of the State Government. The petitioner, however, taking recourse to an order passed by the Maharashtra Electricity Regulatory Commission (for short “MERC) dated 26 June 2015 which required the I.T. industry to obtain permanent registration certificate and as this certificate was submitted by the respondent some time after December 2016, issued a supplementary bill for the period from June 2015 to October 2016 for an amount of Rs.1,53,73,928. In doing so, the petitioner relied on the following paragraph of the MERC:

> "2. This tariff shall also be applicable for use of electricity/power supply to IT/ITES units covered under I.T. Industry and IT enabled Services (as defined in the policy of Government of Maharashtra as may be prevailing from time to time). Till the establishment doesn't receive permanent registration certificate as may be applicable; tariff shall be as per HT-II category and after receipt of permanent registration certificate HT I category shall be applicable till the validity of the certificate."

2. Being aggrieved by the retrospective levy as imposed by the petitioner by issuing the said supplementary bill, the respondent/consumer approached the Consumer Grievance Redressal Forum. The Consumer Grievance Redressal Forum by a detailed order as impugned in this petition considered the complaint made by the respondent and granted the complaint of the respondent. The operative order reads thus:

> "1. The consumer complaint 85/2018 allowed.
> 2. The Supplementary bills dated 04/08/2017 for retrospective recovery for period June 2015 to Oct 2016 is hereby quashed and set aside.
> 3. The Respondent shall charge commercial tariff prospectively from Nov 2016 till the submission of Permanent Registration certificate by applicant for IT/ITES activity from competent authority.
> 4. No order as to the cost."

3. Learned counsel for the petitioner in assailing the impugned order has limited submissions to make. Firstly he has submitted that the petitioner under the Electricity Act 2003 would have a legal authority considering the provisions of Section 56(2) to raise a bill for the retrospective period. He would next submit that the petitioner was justified in issuing a supplementary bill for the

said amount in as much as the respondent had earlier not submitted a permanent registration certificate and the permanent registration certificate dated 22 December 2016 so obtained would not suffice the compliance of the said directions of the MERC. It is his submission that hence the retrospective levy of the electricity charges from June 2015 to October 2016 was justified as such a certificate was not submitted and/or available with the respondent.

4. Having heard the learned counsel for the petitioner and having perused the impugned order dated 26 June 2015 passed by MERC, in my opinion, I find that there is no illegality or perversity on the part of the Consumer Grievance Redressal Forum in coming to the conclusion that the petitioner was not correct in issuing a supplementary bill for the period from June 2015 to October 2016. In regard to the first submission as made by the learned counsel for the petitioner in a given situation the petitioner may have powers to issue a retrospective bill as the law would provide. In so far as the second submission is concerned, it is not in dispute that at all material times including the period from June 2015 to October 2016, the respondent was the beneficiary of a tariff as I.T/ITES industry, namely, that the respondent was being classified as a HT-1 category consumer and accordingly had made payment of the electricity charges. At no point of time, the status of the respondent had ceased to change from that of an I.T/ITES industry. Learned counsel for the respondent has fairly conceded that there is no material for any period much less the disputed

period (June 2015 to October 2016) that the respondent was in fact not a I./ITES consumer. The entire emphasis for the petitioner to issue supplementary bill is on the mere wordings of the order passed by MERC namely "till the establishment does not receive permanent registration certificate as may be applicable". In my opinion, there has to be holistic reading of this clause. It appears that the policy, not only under MERC order but also of the State Government was to confer a benefit to the IT/ITES units to be classified under the customers of HT-1 category and not commercial category. It is also not in dispute that the respondent submitted the certificate dated 22 June 2016, being the permanent registration certificate which was issued by the Government of Maharashtra, Office of District Centre, Thane. The certificate clearly indicates that the date of commencement of the activity, namely, IT activity for the respondent is 28 August 2001. If that be so, merely because the certificate was not initially available and it came to be submitted in December 2016, the petitioner could not have resorted to a retrospective levy. In my opinion, the petitioner was not correct in its approach to issue a supplementary bill so far as the respondent is concerned when there was no material to show that the category of business activity of the respondent for the said period was different from a IT/ITES industry. The interpretation of the said MERC order as made by the petitioner in issuing the supplementary bill was ex-facie erroneous. In any event it would be legitimate for any consumer to take steps to obtain such registration prospectively after the MERC order.

5. On a perusal of the impugned order, in my opinion, Consumer Grievance Redressal Forum has appropriately applied its mind on all these facets and the policies in vogue from time to time. I find that there is no illegality whatsoever much less on any of the contentions as urged on behalf of the petitioner requiring interference withn the limited jurisdiction of this Court under Article 226 and 227 of the Constitution of India. The petition is accordingly without any merit, hence rejected. No costs.

6. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on digitally signed copy of this order.

(G.S.KULKARNI, J.)