

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6382 OF 2020

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Circle Office, Dhule through
its Superintending Engineer
2. The Nodal Officer & Executive Engineer,
(Administration), MSEDCL,
Circle Office, Dhule

PETITIONERS
(Orig. Respondents)

VERSUS

M/s Deesan Agro Tech Ltd.,
Plot No.A-2, MIDC, Avadhan,
Dhule, Tq. & Dist. Dhule
through its Authorized Signatory

RESPONDENT
(Orig. Complainant)

WITH

WRIT PETITION NO.6383 OF 2020

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Circle Office, Dhule through
its Superintending Engineer
2. The Nodal Officer & Executive Engineer,
(Administration), MSEDCL,
Circle Office, Dhule

PETITIONERS
(Orig. Respondents)

VERSUS

M/s Nandi Tax Fab Ltd.,
Plot No. J-2, MIDC, Avadhan,
Dhule, Tq. & Dist. Dhule
through its Authorized Signatory

RESPONDENT
(Orig. Complainant)

AND

WRIT PETITION NO.6384 OF 2020

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Circle Office, Dhule through
its Superintending Engineer
2. The Nodal Officer & Executive Engineer,
(Administration), MSEDCL,
Circle Office, Dhule

PETITIONERS
(Orig. Respondents)

VERSUS

M/s R.K. Agro Product,
Plot No. D-17, MIDC, Avadhan,
Dhule, Tq. & Dist. Dhule
through its Authorized Signatory

RESPONDENT
(Orig. Complainant)

Mr. Avishkar S. Shelke, Advocate for the petitioners in all petitions
Mr. A.S. Savale, Advocate for the respondents in all petitions

CORAM : MANGESH S. PATIL, J.

DATE OF JUDGMENT RESERVED : 21.12.2020
DATE OF JUDGMENT PRONOUNCED : 22.01.2021

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. Learned Advocate Mr. A.S. Savale waives service for the respondents in all these petitions. With the consent of both the sides, the matters are heard finally at the stage of admission.

3. In all these petitions under Article 227 of the Constitution of

India, a Distribution Licensee, established under the Electricity Act, 2003, is impugning the judgment and order passed by the Consumer Grievance Redressal Forum (“CGRF”, for short), established under Section 42 (5) of the Electricity Act, whereby it quashed and set aside the judgments and orders passed by the Internal Consumer Grievance Redressal Cell (for short, “ICGRC”) by which it had rejected/dismissed the claims of the respondents for refund of meter cubicles and other instrument costs and infrastructural cost incurred by them while obtaining electricity connection, allowing the claims of the respondents for such refund. Since common questions of fact and law arise in these petitions and the Advocates for both the sides being the same, these petitions are being disposed of by this common judgment.

4. For the sake of understanding, the parties would be referred to hereinafter as “Distribution Licensee” and “Consumers”, as per their status under the Electricity Act.

5. In sum and substance, the arguments of Mr. A.S. Shelke, the learned Advocate for the Distribution Licensee are to the effect that on a request of the Consumers, it had provided electricity connection which was a Dedicated Distribution Facility (for brevity, “DDF”) as defined under Regulation 2.1(g) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (hereinafter referred to as “Regulations of 2005”). Since it is a DDF, as per Regulation 3.3.3, the Distribution Licensee is entitled to recover all expenses

reasonably incurred on such works based on the schedule of charges approved by the Maharashtra Electricity Regulatory Commission (“MERC”, for short) under Regulation 18 and therefore, the Consumers have to bear the infrastructural costs, including metering cubicles with 1.3% supervision charges as laid down therein. The ICGRC had rightly appreciated these facts and circumstances and had dismissed the claims of the Consumers for refund. Without there being any just and reasonable ground, the CGRF quashed and set aside the decisions of the ICGRC and allowed the complaint of the Consumers and directed a refund as claimed by them by referring to the decision of this Court in the case of ***MSEDCL, Wardha Vs. Mohan Pundlik Manmode*** in ***Writ Petition No.6619 of 2019 dated 11.10.2019*** (Nagpur Bench) and the Circular No. CE Testing/ HT-EHV/Metering/Circular/CM-CF/ 8378 dated 16.04.2018.

6. The learned Advocate would submit that the reliance placed by the CGRF on this decision and the Circular was misplaced. It was on the basis of the facts and circumstances obtaining before the Court that it was held that the electricity connection provided to the Consumer therein could not be regarded as DDE. He would submit that in turn, in that decision, reliance was placed on another decision of this Court in the case of ***Maharashtra State Electricity Distribution Company Limited (MSEDCL), Nagpur v M/s Darpan Multi Polypack (India) Private Limited, Nagpur and another*** in ***Writ Petition No.468 of 2018, dated 20.03.2019***. He would

submit that even in the case of *M/s Darpan Multi Polypack (India) Private Limited, Nagpur and another* (supra), it was on the facts and circumstances obtaining before the Court that it was held that the facility that was provided to the Consumer therein was not a DDE, as defined under Regulation 2.1 (g). He would submit that in the matter in hand, no such dispute has been raised and the facility that has been provided to the Consumers is, in fact, a DDE.

7. So far as the Circular dated 16.04.2018 is concerned, Mr. Shelke, the learned Advocate would submit that the circular was issued by the Chief Engineer (Testing) of the Distribution Licensee to meet a contingency namely if metering equipments were not readily available in stock, the Consumers were to be allowed to procure the metering equipments and the cost was to be refunded to them in the form of set-off in the next energy bills. The Circular did not apply and was not meant for a DDE.

8. The learned Advocate for the Distribution Licensee would submit that the dispute raised by the Consumers was not a “grievance” as contemplated by Regulation 2.1 (c) of the Regulations of 2005. The claims were beyond the limitation of two years prescribed in Regulation 6.6. Lastly, he would submit that no opportunity was extended to the Distribution Licensee to put up its stand before the CGRF.

9. Mr. Shelke, learned Advocate for the Distribution Licensee would point out that in the case of Consumer in Writ Petition No.6384/2020,

without the Consumer having raised any claim, the CGRF has directed even the infrastructural cost to be refunded. The learned Advocate thus submits that the CGRF has not appreciated the facts and circumstances in the correct perspective and has not applied the law correctly while passing the impugned orders and those may be quashed and set aside.

10. Mr. A.S. Savale, learned Advocate for the Consumers would submit that according to Regulation 6.2 (a) of the Maharashtra Electricity Regulatory Commission (CGRF & EO) Regulations, 2006 ("Regulations of 2006", for short), the consumer meters shall generally be owned by the Distribution Licensee. It is only if he elects to purchase a meter that he is not so entitled to claim a refund. It is the primary responsibility, statutory duty and obligation on the part of the Distribution Licensee as contemplated under Section 55 of the Electricity Act to supply electricity through installation of correct meter in accordance with the Regulations. He would then submit that in fact whether it is a DDF or a non-DDF, it does not make any difference. Such a difference has not been envisaged much less any different provision is laid down in the Regulations of 2006 empowering the Distribution Licensee to claim such charges which would be different for a DDF and non-DDF connection.

11. Mr. Savale, learned Advocate would submit that Regulation 3.3.3 of the Regulations of 2005 does not empower the Distribution Licensee to recover cost of meter and it only empowers it to recover the expenses

reasonably incurred on works of installation of DDF. He would, therefore, submit that the reliance placed by the CGRF on the decision in the case of ***Mohan Pundlik Manmode*** (supra) is correct. Even in the case of ***M/s Darpan Multi Polypack (India) Private Limited, Nagpur and another*** (supra), a similar view was taken. He would further submit that in the case of ***Chandu Khamaru Vs. Nayan Malik & Ors. [Civil Appeal No.7572/2011 (arising out of S.L.P (C) No.15332/2008)]***, it has been laid down by the Supreme Court that it is primarily responsibility of the Distribution Licensee to make necessary arrangement for development of its own infrastructure for providing electricity supply in terms of Section 43 of the Electricity Act.

12. The learned Advocate would submit that even in the matters like in the cases of ***Mohan Pundlik Manmode*** (supra) and ***M/s Darpan Multi Polypack (India) Private Limited, Nagpur and another*** (supra), the Consumers therein were provided mere extension or tapping of an existing line and based on the sketch/map prepared by the Distribution Licensee that the CGRF has rightly come to the conclusion that supply provided to the Consumers was not DDF.

13. Mr. Savale, learned Advocate for the Consumers would then submit that there was no delay in lodging the claims which were lodged strictly within a period of two years from accrual of cause of action. He would further submit that the decision of Maharashtra Electricity Regulatory Commission (MERC) in case No.70 of 2005 dated 08.09.2006, directing the

Distribution Licensee to refund cost of meter was challenged before the APTEL in appeal. It was dismissed on 14.05.2007. After such dismissal of appeal, the MERC, by the order dated 17.05.2007, in case No.82/2006 directed the Distribution Licensee to refund the cost of the meter and not to collect money, which is not approved in the schedule of charges. The Distribution Licensee approached the Supreme Court in Civil Appeal No.4305/2007 against the order of MERC dated 17.05.2007, but the Supreme Court dismissed it on 10.11.2016. It is thereafter that the Circular dated 16.04.2018 was issued and from the date of the Circular, the claim was lodged within two years and therefore, there was no delay.

14. Mr. Savale, learned Advocate would further submit that as far as the dispute being a “grievance” or otherwise is concerned, the law has now been settled by this Court in the case of *M/s Darpan Multi Polypack (India) Ltd., Nagpur vs. The Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, Nagpur and Ors. in Writ Petition No.4594/2014 with Writ Petition No.4745/2014, decided on 16.12.2015*. It has now been laid down by the Division Bench that the term “Grievance” as defined under Regulation 2.1 (c) of the Regulations of 2006 also includes the grievance in respect of non-compliance of the orders of the Commission or any action to be taken in pursuance thereof.

15. To begin with, suffice for the purpose to observe that the submission on behalf of the Distribution Licensee that the claims of refund

being put forth by the Consumers do not constitute “grievance”, as defined under Regulation 2.1 (c) of the Regulations of 2006 is concerned, the Division Bench in the case of ***M/s Darpan Multi Polypack (India) Ltd., Nagpur in Writ Petition No.4594/2014*** (supra), has emphatically laid down as under :

“The term “grievance” as defined by regulation 2.1(c) of the regulations of 2006 is not restricted only to any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee and the said definition also includes the grievance in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof.”

In view of such emphatic pronouncement, the issue does not remain *res integra* and the argument on behalf of the Distribution Licensee in this respect is liable to be rejected.

16. Now coming to the core issue, in none of these petitions the Consumers in their affidavits-in-reply have specifically denied that the connection, which was provided to them, was a DDF. They have been conspicuously omitting to state anything in this aspect. The further statements in these affidavits proceed to demonstrate as to how it is inconsequential if it is a DDF or a non-DDF connection. In my considered view, it was expected of the Consumers to have been more emphatic if they were to deny that their connection was of that category i.e. DDF.

17. It is not that they were oblivious of the consequences even if it is being argued on their behalf that the category of such connection as to if it is DDF or non-DDF does not make any difference so far as their claim for refund is concerned.

18. As can be appreciated, a DDF has been defined in Regulation 2.1 (g) of the Regulations of 2005 as under :

“Dedicated distribution facilities” means such facilities, not including a service-line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises.”

. The Regulations of 2005 lay down elaborate provisions in Regulation 3, touching the aspect of recovery of charges by the Distribution Licensee. As can be seen from Regulation 3.3.3, in case of a DDF, the Distribution Licensee is authorized to recover all expenses reasonably incurred on such works from a Consumer based on the schedule of charges approved under Regulation 18. It reads thus :

“3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.”

It is, therefore, eloquent that whether it is a DDF or a non-DDF connection, it does make a difference since this provision enables a Distribution Licensee to recover the expenses in case of a DDF only and not in case of a non-DDF. It was, therefore, expected of the Consumers to have specifically taken a stand as to if the connection provided to them is a DDF or otherwise. More so, when, according to the Distribution Licensee, it was a DDF.

19. As can be appreciated, in the cases of *Mohan Pundlik Manmode* (supra) and *M/s Darpan Multi Polypack (India) Private Limited, Nagpur and another* (supra), it was on the facts and circumstances obtaining in those matters that it was concluded that the connections that were provided to the consumers therein were, in fact, not a DDF as defined under Regulation 2.1(g).

20. Conspicuously, while putting up their grievance before the ICGRC, the Consumers had not taken any such stand of their connection not being a DDF. In fact, it was a specific stand of the Distribution Licensee before the ICGRC that their connection was a DDF. Apart from this, in the appeal/application preferred by the Consumers before the CRRE, they did not take any stand in this respect much less refuting the claim of the Distribution Licensee that their connection was a DDF. In spite of such a state-of-affairs, the CGRF in the impugned judgments and orders, without there being any dispute raised by anybody much less by the Consumers, has come to a

conclusion and has given a finding that their connection was not a DDF. It clearly demonstrates that without any dispute having been raised by the Consumers, the CGRF on its own has gone ahead and has reached such a conclusion, sans any pleadings and arguments on these lines. The observations made and the conclusions drawn in the impugned orders, therefore, in this respect are clearly perverse, arbitrary and capricious.

21. The provisions concerning the distribution of electricity are contained in Part-VI of the Electricity Act. Section 43 provides that it shall be the duty of a Distribution Licensee to give supply of electricity on an application by owner or occupier of a premises. Conspicuously, by virtue of proviso to sub-section (2) of Section 43, such obligation is to be discharged only if he agrees to pay to the Licensee the price as determined by the Appropriate Commission. Section 55 then lays down provisions in respect of use, etc. of meters. It provides that Distribution Licensee shall install a correct meter and conspicuously the first proviso to sub-section (1) requires the consumer to give security to the Distribution Licensee for the price of the meter unless he elects to purchase a meter. It is, therefore, apparent that unless a consumer opts to purchase a meter, it is the primary obligation of the Distribution Licensee to install a meter. Commensurate with these provisions, the aforementioned Regulation 14.1 makes a similar provision. If this be so, it would clearly be the volition of an individual consumer to opt to purchase a meter in which case he may not be required to deposit anything as a

security obviously because he would then own the meter. Conversely, if the Distribution Licensee installs a meter, it being the owner but since the meter is installed in the premises of the consumer, it is entitled to demand a security.

22. True it is that Regulation 3.3.3 of Regulations of 2005 does not lay down any entitlement of the Distribution Licensee to lay a claim in respect of meter and metering costs. The reason is not far to seek. As has been provided in Sections 43 to 55 of the Electricity Act, it is the primary obligation of a Distribution Licensee to provide electricity supply. The scheme of these provisions particularly Section 55 coupled with the finding of the MERC in its order in case No.70/2005 in 'Item Cost of meter and meter box', a Distribution Licensee is directed not to recover any cost towards meter and meter box except where the Consumers opt to purchase the meter or in case of loss and burnt meter as laid down in Regulations 14.1.1 and 14.1.2 of the Regulations of 2005. The Regulations 14.1 and 14.2 read as under:

“14.1 Supply and Cost of Meter

14.1.1 Except where the consumer elects to purchase a meter, the Distribution Licensee may require the consumer to provide security for the price of the meter in accordance with the provisions of clause (b) of sub-section (1) of Section 47 of the Act.

Provided that in no case shall the amount of the security exceed the price of the meter.

Provided further that the Distribution Licensee shall pay to the consumer interest at the rate equivalent to the bank rate of the Reserve Bank of India, on the amount of security deposit maintained by the consumer under this Regulation 14.1.1.

14.1.2 The charges for hiring of meters by a consumer shall be in accordance with the approved schedule of charges under Regulation 18.”

23. As can be understood, ordinarily, a Distribution Licensee is under obligation to provide a meter at its own cost. It is entitled only to insist for a security deposit in respect of the meter since the meter is supposed to be owned by it. However, as can be gathered, if a consumer purchases the meter, obviously he being the owner of the meter, there is no question of the Distribution Licensee claiming back the meter as and when the agreement pertaining to the electricity connection comes to an end. The analogy is that except where a consumer purchases the meter, the Distribution Licensee has to fix the meter, have a security deposit and also claim hiring charges from the Consumers under Regulation 18. Obviously, therefore, whenever a consumer opts to purchase a meter, he continues to be its owner forever and there would not be any question of making any security deposit or payment of hiring charges under Regulation 14.

24. As a logical and legal corollary, if a consumer agrees to purchase a meter, it cannot be said that such an agreement is unconscionable or against public policy merely because like in the present case, a proposal was

made by the Distribution Licensee to provide electricity supply subject to various terms and conditions, including the one obligating the consumers in installing the electricity meters and developing necessary infrastructure for facilitating a DDF connection. Therefore, the submission of the learned Advocate for the Consumers that a consumer cannot be legally contracted out, is fallacious. As is demonstrated hereinabove, a DDF connection is a facility which has been duly recognized by Regulations of 2005 and if the Consumers have opted to have it, no statutory obligation is created in their favour to claim the refund.

25. Interestingly, inspite of having come to a conclusion in the impugned orders that the connections that were provided to the Consumers were DDF connections, the CGRF has erroneously directed refund of the metering cubicles and/or infrastructure costs. Pertinently, in case of Writ Petition No.6382/2020, though the Consumer claimed refund of even infrastructural cost, the CGRF has refused to direct any such refund under that head and only directed cost of metering cubicles to be refunded. But the Consumer has not challenged that part of the order refusing to refund infrastructural cost.

26. In case of Writ Petition No.6384/2020, the CGRF has directed to refund cost of metering cubicle as well as infrastructural cost but as is observed earlier, while filing the grievance with ICGRC, no such claim for refund of infrastructural cost was raised, as can be seen from the letter

submitted by the Consumer therein with the Superintending Engineer dated 05.08.2019 (Exhibit-E).

27. In this respect, it is also pertinent to note that although a Distribution Licensee is under statutory obligation to provide electricity supply, in a given case like the present ones, the Consumers have opted to succumb to the demand of the Distribution Licensee wherein by separate communications, terms and conditions were put to them subject to which they were supposed to enter into an agreement and receive electricity supply. The terms and conditions inter alia require them to bear the expenditure on a non-refundable basis. After having availed of the benefit, they cannot now be allowed to turn around and claim refund. They could have very well insisted for supply of electricity strictly in accordance with the provisions of the Electricity Act and the Regulations framed thereunder. They having agreed to bear such infrastructural costs and agreed to purchase meters and metering cubicles, the Distribution Licensee cannot be said to be under any statutory obligation to refund the infrastructural cost and metering cubicles cost. This is what was apparently concluded by the ICGRG.

28. Without considering all these aspects, by the impugned orders the CGRF has allowed the grievance of the Consumers and directed refund, which orders and directions are clearly perverse, arbitrary and capricious.

29. In the result, the Writ Petitions are allowed. The impugned

judgments and orders passed by the CGRF are quashed and set aside. The Rule is made absolute accordingly in each of these petitions.

[MANGESH S. PATIL]
JUDGE

npj/WP6382-6383-6384-2020