

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6182 OF 2020

Executive Engineer,
Maharashtra State Electricity
Distribution Company Limited,
O & M Division No.1, Parbhani,
District Parbhani

...PETITIONER

VERSUS

Pramod Prabhakar Rao Wakodkar (User)
Chandrakant Joshi,
Age major (Consumer No.5300104969760)
At : Plot No.5, MIDC, Parbhani,
District Parbhani – 431 401

... RESPONDENT

.....
Mr. U.S. Malte, Advocate for petitioner
Mr. Shaikh Mohammad Osman, Advocate with
Mr. I.G. Durani, Advocate for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 21st January, 2021

Date of pronouncing order : 17th March, 2021

ORDER :

The challenge in this Writ Petition is to the order dated 3/12/2019, passed by the Electricity Ombudsman, Nagpur in Representation No.81/2019. The order reads as follows :-

- (i) The Respondent shall recover the tariff difference from LT-Industrial to LT-Commercial from April 2016 to march 2018 only i.e. for two years and revise the bill accordingly.
- (ii) The Respondent shall not levy interest and DPC for the revised debit bill adjustment that would be raised.
- (iii) The revision in bill shall be done as early as possible but not later than one month from the date of issue of this order.
- (iv) The respondent shall submit the compliance report within two months from the date of issue of this order.
- (v) The Secretariat of this office is directed to refund the amount of Rs.25,000/- deposited by the Appellant.
- (vi) No order as to costs.”

The Maharashtra State Electricity Distribution Company (MSEDCL) is before this Court in this Writ Petition.

2. Electricity supply was given to one Shri Chandrakant Joshi for Plot No.5, MIDC, Parbhani on 28/2/2007, bearing Consumer No. 530010496976. The connected load was 5 HP under LT-V Industry tariff category. The flying squad of the MSEDCL, Parbhani paid surprise visit to the Plot No.5, MIDC, Parbhani on 13/12/2017. It was found that, business of laundry was being run in the premises

supplied with electricity for industrial purpose. 'Laundry' activity falls under commercial category. No manufacturing process was noticed. The spot inspection report was prepared by the flying squad in the presence of a representative of consumer. A copy of the spot inspection report was delivered to the representative. The Sub-Divisional Office, Parbhani (Urban) then issued tariff difference arrears bill of Rs.3,28,906=22 ps. for the period from January 2010 to March 2018 from LTV Industrial to LT-II commercial category in the month of October 2018. It also changed the tariff of the consumer from April 2018 from industrial to commercial category.

3. On receipt of the bill, the respondent approached the Consumer Grievances Redressal Forum (CGRF) with the grievance/ complaint. The MSEDCL appeared before the CGRF. Vide its order dated 11/9/2019, the CGRF dismissed the complaint. The respondent, therefore, moved a representation thereagainst to the Electricity Ombudsman.

4. According to the respondent, he has been running an industry by name "Snow-white Dry Cleaning" at Plot No.5, Parbhani MIDC. The Small Scale Industries Department has issued him 'industry certificate' in that regard. Shri

Chandrakant Joshi would run manufacturing unit by name "Prayag Industry" at Plot No.5. the said plot has been duly transferred in the name of the respondent. He had then applied to MSEDCL for transfer of electricity connection to his name. The MSEDCL, however, did not transfer it. According to the respondent, the business he was doing is an industrial activity. The MSEDCL was, therefore, not justified to issue the bill, charging commercial tariff.

5. Shri Uday Malte, learned counsel for the petitioner MSEDCL would submit that, the respondent is not a consumer within the meaning of Section 2(15) of the Electricity Act, 2003. When the flying squad paid visit to Plot No.5, MIDC, Parbhani, it was noticed that the business of laundry was being run. No manufacturing process was seen. The business of laundry falls under commercial activity. The respondent was, therefore, issued with the impugned bill. According to learned counsel, the CGRF did not have jurisdiction to entertain the complaint since the subject matter of the complaint was an unauthorised use of electricity as provided under Section 126 of the Electricity Act. Clause 6.8 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of supply) Regulations, 2005 provides that, if the CGRF is prima facie of the view

that any grievance referred to it falls within the purview of any of the following provisions of the Act, the same shall be excluded from the jurisdiction of the forum. Unauthorised use of electricity falls within the purview of such provisions. Learned counsel also placed reliance on Item Nos.10 and 13 pertaining to change of name and classification and re-classification of consumer into tariff categories respectively from Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of supply) Regulations, 2005 to submit that there is a prescribed procedure for change of name of a consumer i.e. transfer of connection from the name of one person to another person in case of transfer of ownership or occupancy of the premises. According to learned counsel, the Ombudsman was not justified to direct the MSEDCL to charge the bill for a period not more than two years. According to him, under certain circumstances, Section 56(2) of the Electricity Act has no application. Learned counsel relied on the judgment of Apex Court in case of **Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan Alias Rahamjulla [(2020) 4 SCC 650]** and urged for setting aside the impugned order.

6. Learned counsel for the respondent would, on the

other hand, submit that the premises wherein the respondent has been running an industry, has been transferred in his name by the MIDC. The respondent fulfills the conditions of being a consumer within the meaning of Section 2(15) of the Act. The MSEDCL is not entitled to recover any sum due from the consumer under Section 56 of the Act after the period of two years from the date when such sum first became due unless the same has been shown continuously as recoverable as arrears of charge of electricity supplied. Learned counsel supported the impugned order.

7. Section 2(15) of the Electricity act defines the term 'consumer' to mean any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.

8. The record indicates that, the respondent had applied long back for transfer of the electricity connection from the name of Chandrakant Joshi to his. The premises to

which the electricity has been supplied has been occupied by the respondent. The MIDC has transferred the said premises to the respondent. As such, the premises of the respondent have been for the time being connected for the purpose of receiving electricity with the works of the MSEDCL. He, therefore, becomes a consumer within the meaning of the term defined under Section 2 (15) of the Electricity Act.

9. A consumer who has a grievance against an electricity bill has a right to approach the CGRF for redressal of his grievance. It is true that, vide clause 6.8, if the CGRF is prima facie of the view that the grievance referred to it pertains to unauthorised use of electricity as provided under Section 126 of the Act, it has no jurisdiction to entertain the same. Admittedly, the MSEDCL did not resort to Section 126 of the Electricity Act, whereunder a detailed procedure has been prescribed. In the given circumstances, the respondent was justified in approaching the CGRF. He made representation to the Ombudsman, who, relying on the judgment of a Full Bench of this Court in case of **Maharashtra State Electricity Distribution Company Ltd., Sindhudurg Kudal Vs. Electricity Ombudsman, Mumbai [2019(2) Mh.L.J. 884]**, passed the impugned order. According to the Ombudsman, the MSEDCL can not recover the bill under Section 56 of the

Electricity Act for a period of more than two years.

10. Before the Ombudsman, a submission was made on behalf of the respondent that though he had prayed for quashing the debit bill adjustment, he requested the authority to pass an order as per the provisions of the Electricity Act. He also did not press too much as regards the nature of business that was being carried at the premises.

11. Section 56 of the Electricity Act reads thus :

“Section 56. (Disconnection of supply in default of payment): --

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

- (a) an amount equal to the sum claimed from him, or
 - b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.
- (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section 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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

12. The impugned electricity bill has been raised for the consumption of electricity for commercial purpose during the period from January 2010 to March 2018. The bill is in the nature of tariff difference arrears between the tariff meant for industrial use and commercial category. From the bill, it is not known whether it has been issued under Section 56 of the Act. Sub-clause (2) of Section 56 bars recovery of amount due beyond the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges of electricity supplied. Admittedly, in the bills issued during the period immediately preceding issuance of the impugned bill, such

sum has not been shown in each bill recoverable of arrear of charges of electricity supplied.

13. The learned counsel for the petitioner, relying on the Apex Court's judgment in case of Ajmer Vidyut Vitran Nigam Limited (supra) would submit that, it is only when a surprise inspection was made on 13/12/2017 it was realised that the electricity supplied for industrial purpose had all along been used for commercial purpose and, therefore, the impugned tariff difference arrears bill came to be issued.

I have perused the aforesaid judgment to find that, during the course of regular audit, it was discovered that, in 52 cases including that of the respondent, the bills were raised under wrong tariff Code 4400 instead of Tariff Code 9400, under which the prescribed tariff rate was Rs.2.10 per unit. The facts of the case in hand do not pertain to a discovery of mistake in charging the respondent with a lesser tariff meant for industrial purpose. The Apex Court observed that, Section 56(2) did not preclude the licensee Company from raising an additional or supplementary demand after the expiry of limitation period under Section 56(2) in the case of a mistake or bonafide error. It did not, however, empower the licensee Company to take recourse to the coercive measures

of disconnection of the electricity supply, for recovery of additional demand. In case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. It further observed :-

“7.4. Sub-section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues. This statutory right is subject to the period of limitation of two years provided by sub-section (2) of Section 56 of the Act.

7.5. The period of limitation of two years would commence from the date on which the electricity charges became “first due” under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electrici’

supplied, in the bills raised for the past period. If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became “first due”, it would defeat the object of Section 56(2).

8. Section 56(2), however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.”

14. In my view, the petitioner MSEDCL ought to have taken recourse to Section 126 of the Act. For better appreciation, relevant provisions of Sections 126 and 127 of the Electricity Act are reproduced below :-

Section 126: (Assessment): ---

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to [twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”

Section 127. (Appeal to Appellate Authority): ---

(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such

manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

15. The respondent has all along been contending that the electricity has been used for industrial purpose. If according to the MSEDCL it was a case of an unauthorised use of electricity and it proposed to raise the bill for the period of more than two years, it ought to have resorted to the procedure contemplated under Section 126 of the Act,

whereunder the respondent gets a reasonable opportunity of hearing before a final order of assessment is passed. Moreover, the respondent/ assessee has a remedy of appeal under Section 127 of the Act to challenge a final order made under Section 126.

16. In view of the above, I do not find any reason to interfere with the impugned order passed by the Ombudsman. The writ petition fails. The same is dismissed. It is, however, observed that, the MSEDCL may take recourse to any remedy available in law for recovery of the additional demand raised in the impugned bill.

**(R. G. AVACHAT)
JUDGE**

fmp/-