

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No.282 OF 2013

The Chief Electrical Engineer,
Electricity Department,
Government of Goa,
Vidyut Bhavan, Panaji, Goa 403 001,
Through the office of the
Executive Engineer,
Div.-V, Electricity Department,
Government of Goa,
Bicholim, Goa.

..... Petitioner

Versus

M/s. Shetye Steels Limited,
A Private Limited Company,
incorporated under the
Companies Act, 1956, having
its Office at Radhakrishna Industrial
Estate, Bicholim, Goa 403 504,
through its Director,
Mr. Kundankumar Shetye,
major of age, Indian National,
residing at Nagzarwada, Bicholim, Goa.

..... Respondent.

Mr. Devidas J. Pangam, Advocate General with Mr. Sagar
Dhargalkar, Additional Government Advocate for the Petitioner.

Mr. Nitin N. Sardessai, Senior Advocate with Mr. Ryan Da Piedade
Menezes and Ms. Gina Almeida, Advocates for the Respondent.

WITH

WRIT PETITION No.347 OF 2013

1. M/s. Goa Steels Limited,

A Company incorporated under the Companies Act, having registered Office at Radhakrishna Industrial Estate, Bicholim, Goa represented herein by its Director,
Mr. Kundankumar A. Shetye,
major, Indian National,
r/o. Nagzarwada, Bicholim, Goa.

2. Mr. Kundankumar A. Shetye,
son of late Shri Anand Shetye,
major of age, Indian National,
Director, Goa Steels Limited,
r/o. Nagzarwada, Bicholim, Goa.

... Petitioners.

Versus

1. State of Goa, through its
Secretary (Power), Secretariat,
Alto Porrima, Bardez, Goa.

2. Department of Electricity,
Government of Goa,
through Chief Electrical Engineer,
Vidyut Bhawan, Panaji, Goa 403 001

..... Respondents.

Mr. Nitin N. Sardessai, Senior Advocate with Mr. Ryan Da Piedade Menezes, Advocate for the Petitioners.

Mr. Devidas J. Pangam, Advocate General with Mr. Sagar Dhargalkar, Additional Government Advocate for the Respondents.

***Coram : M.S. Sonak &
Smt. Bharati H. Dangre, JJ.***

Date : 2nd March, 2021.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Mr. D. Pangam, the learned Advocate General, who appears along with Mr. Sagar Dhargalkar, the learned Additional Govt. Advocate for the Petitioners in Writ Petition No.282/2013 and Mr. Nitin Sardessai, the learned Senior Advocate, who appears along with Mr. Ryan Menezes for the Respondents.

2. We have also heard Mr. Nitin Sardessai, the learned Senior Advocate, who appears along with Mr. Ryan Menezes for the Petitioners in Writ Petition No.347/2013 and Mr. D. Pangam, the learned Advocate General, who appears along with Mr. Sagar Dhargalkar, the learned Additional Govt. Advocate for the Respondents.

3. In Writ Petition No.282/2013, the challenge is to the order dated 30th May, 2012, made by the Electricity Ombudsman to the following effect :

“ORDER

34. Based on the above, the representation of the Appellant is disposed off with the following order:

i. The impugned order of the CGRF, Electricity Department, Goa, is set aside.

ii. Decision of the Chief Electrical Engineer, Govt. of Goa, conveyed vide letter dated 06.01.2004 to the concerned Executive Engineer, with respect to freezing of arrears of Rs. 30,89,533 w.e.f. 20.04.2001, which later

realised to be not within the powers of the Chief Electrical Engineer as Head of the Department as per Goa State Govt. Notification on Financial Powers, and adjudged to be as not a valid decision, shall explicitly be cancelled forthwith so that clear message is sent to all concerned and the Appellant consumer, no longer, is kept under any more illusion.

iii. Bills for the month of Oct. and Nov. 2000, as pleaded by the Appellant, shall be reconciled.

iv. The bills shall be revised on month to month basis to arrive at the correct amount of arrears outstanding at the time of reconnection of the Appellant's HT installation in May 2001.

v. DPS shall be levied based on the judgement of the Hon'ble Supreme Court in the case of M/s Venkateshwara Alloy (P) Ltd. V/s State of Goa and Ors i.e. at a flat rate-of 18% simple interest from the date of reconnection of the Consumer's HT installation till the deposit of the entire amount by. The Appellant in terms of judgement of the Hon'ble High Court of Bombay at Goa in writ petition No. 847 of 2009.

vi. DPS shall be levied only on such of the amount of arrears/dues which remained unpaid by the Appellant by due date.

vii. Based on (iii) to (vi) above, month-wise statement, indicating (a) the amount of arrears payable (including levy of DPS), (b) amount paid by the Appellant consumer (including monthly current energy bills), and (c) the amount paid in excess or remaining to be recovered, shall be worked out, verified by the competent authority and made available to the Appellant.

viii. Excess amount (if any), so determined, paid by the Appellant shall be refunded with interest equivalent to the bank rate (currently 6% p.a.) by way of adjustment against electricity bills of current consumption in respect of his HT installation to be raised on him hereafter.”

4. In Writ Petition No.347/2013, the Petitioners who are the Respondents in Writ Petition No.282/2013, and the beneficiaries of the Ombudsman's order dated 30th May, 2012, seek its implementation. Therefore, it is only appropriate that both these Petitions are taken up for consideration and disposed of by a common Judgment and Order.

5. We have heard the learned Counsel for the parties.

6. We find that the basis of the Ombudsman's Order dated 30th May, 2012, is the communication dated 6/1/2004 issued by one of the Executive Engineers of the Electricity Department to another Executive Engineer.

7. The communication dated 6/1/2004, reads as follows :

*“ Chief Electrical Engineer,
Government of Goa,
Vidyut Bhavan,
3rd Floor, Panaji, Goa
Dated :- 6/01/2004.*

*To,
The Executive Engineer,*

*O&Me Division No.V,
Electricity Department,
Bicholim -Goa.*

*Sub : Freezing of arrears and recovery of dues of
H.T. Installation - HTC - 22(B),
M/s. Goa Steel Ltd. (Casting Division) at
Bicholim.*

The undersigned is directed by the Chief Electrical Engineer to convey the approval to freeze the arrears of Rs.30,89,533=00 which was outstanding at the time of reconnection of the above H.T. Installation i.e. 20-4-2001. Also reconcile the H.T. bill issued for the month of October 2000 and November 2000 as demand charges are billed as per the billing/contract demand.

In view of the above, H.T. bills issued to the above consumer shall be revised on month to month basis and final arrears/credit position shall be arrived and intimated to consumer.

*Sd/-
(S.R. Kulkarni)
Executive Engineer*

Copy to :-

- 1) The Jt. Director of Accounts,
O/o CEE. , Panaji.*
- 2) The Superintending Engineer,
O&M. Circle-II(North), Panaji ~ Goa”.*

8. Now, there is absolutely nothing on record to indicate that the communication dated 6/1/2004 was ever addressed to or communicated to the Respondent(consumer). Mr. Sardesai, the learned Senior Advocate did try to submit that the the consumer was aware of such communication and, in any case, such communication

was ultimately furnished to the consumer by resort to the proceedings under the Right to Information Act (RTI). However, we find that the record neither indicates that the aforesaid communication was either addressed to the consumer or communicated to the consumer. The obtaining of such communication under RTI is not sufficient to claim legal rights of the nature claimed by the consumer.

9. In absence of any formal communication, we fail to appreciate as to how the Ombudsman could have relied upon such communication and granted the consumer the benefit of freezing of arrears of ₹ 30,89,533/- which was outstanding in respect of the Consumer connection HTC-21(B).

10. In State of *Uttaranchal and another vs. Sunil Kumar and ors.*¹ and *Bachhittar Singh vs. The State of Punjab*², it is held that unless and until there is valid communication of an order in accordance with the procedure prescribed under law, such order cannot have any legal effect. Such order cannot, therefore, be relied upon by a party to whom the same was neither addressed, nor communicated. This principle will apply in the present case and on that short ground, the order of the Ombudsman will have to be set aside.

11. Besides, the learned Advocate General also submitted that

¹ (2011) 8 SCC 670

² AIR 1963 SC 395

even the Chief Engineer, much less any Executive Engineer had the power to approve any freezing of arrears towards electricity supply, in absence of any statutory backing or delegation of powers, even the Chief Engineer could not have directed or approved freezing of arrears. Since the Ombudsman has referred to no legal provision which may have conferred such powers on the Executive Engineer or for that matter, the Chief Engineer, the Ombudsman's order is vulnerable and is required to be set aside.

12. On the aforesaid two grounds, we quash and set aside the Ombudsman's order dated 30th May, 2012 and make the Rule absolute in Writ Petition No.282/2013.

13. Since, the Ombudsman's Order dated 30th May, 2012 has been set aside, there is no question of grant of any relief in Writ Petition No.347/2013 which seeks implementation of the Ombudsman's Order dated 30th May, 2012. Accordingly, Writ Petition No.347/2013 is, hereby, dismissed.

14. Mr. Sardesai, however, pointed out that the Petitioner wishes to apply for One Time Settlement (OTS) facility in pursuance of the scheme formulated by the State Government. The learned Advocate General points out that the consumer had applied for the benefit of such facility in respect of connection bearing No.HTC 18(B). The same has been rejected on the ground that there was no

order of the Ombudsman in respect of this connection.

15. Mr. Sardesai, on instructions, states that the consumer will now apply for the OTS in respect of the aforesaid connection HTC – 21(B), afresh and, without prejudice, he points out that in pursuance of the order made by this Court on 2nd March, 2010 in Writ Petition No.847/2009, the consumer has already deposited the entire demanded amount and, therefore, such deposit be taken into consideration for the purpose of the OTS. He, on instructions, submits that the consumer will not be averse to adjustment of the deposited amounts towards the future bill cycle.

16. If the consumer indeed makes an application for the OTS within four weeks from today, then, the State Government to consider the same in accordance with law and on its own merits. The State Government to also take into account the circumstance that deposit of the entire arrears was made by the consumer in pursuance of the order made by this Court in Writ Petition No.847/2009.

17. All contentions of all parties on this issue are, however, left open. In case the consumer is aggrieved by any decision on its application for OTS, the consumer is granted liberty to take out appropriate proceedings to question the same.

18. Both these Petitions are disposed of in the aforesaid terms.

There shall be no order as to costs.

19. All concerned to act on the basis of an authenticated copy of this order.

Smt. Bharati H. Dangre, J.

M.S. Sonak, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL
Date: 2021.03.05 13:48:52 +05'30'