

Sneha N.
Chavan

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1980 OF 2020
IN
WRIT PETITION NO. 9224 OF 2018

M/s. Marigold Pharmaceuticals
Pvt. Ltd.

...Applicant

In the matter between:

The Executive Engineer,
Maharashtra State Electricity
Distribution Co. Ltd.
V/s.

..Petitioner

M/s. Marigold Pharmaceuticals
Pvt. Ltd.

..Respondent

Dr. Abhinav Chandrachud, a/w Vinod Sangvikar a/w Vaishali
Gholave for the Applicant.
Mrs. A.R.S. Baxi for the Respondent/ Original petitioner.

CORAM : C.V. BHADANG, J.

DATE : 11th MARCH, 2021

P.C.

1. This application is filed for review/modification of the order dated 22.01.2020 passed by this Bench, in writ petition No. 9224 of 2018 in civil application No. 1282 of 2019. The order reads thus:

“1. Heard. Rule. Learned advocate Mr. Vinod Sangvikar waives service of notice on behalf of the Respondent. Hearing of the petition is expedited.”

2. There shall be interim stay of the impugned order pending disposal of the petition. In the meantime, it will be open to the Respondent to pay the amount of the estimate, as raised by the Petitioner, under protest, and if such amount is deposited under protest, the Petitioner shall release the connection, as required by the Respondent.”

2. I have heard Mr. Chandrachud, the learned counsel for the applicant (original respondent) and Mrs. Baxi for respondent (original petitioner). Perused record.

3. The order challenged in writ petition no. 9224 of 2018 is the order dated 14.05.2018 passed by the Maharashtra State Electricity Regulatory Commission (“Commission” for short) by which the complaint filed by the present applicant, has been partly allowed. By virtue of the operative order at serial No.3, the respondent Maharashtra State Electricity Distribution Co. Ltd (“MSEDCL” for short) is directed to release an electricity connection in favour of the applicant from Manegaon Sub-station, within 90 days at the cost of the MSEDCL. There are certain other directions issued about the recovery of certain amount from the salary of the concerned officers as per the standard operating procedure (SOP).

4. Mr. Chandrachud, the learned counsel for the applicant stated that order dated 22.01.2020 may be reviewed/modified to the extent of vacating the stay in respect of clause 3 of the operative order passed by the Commission. In other words, he submits that the interim stay on the order directing MSEDCL to release the connection, may be vacated. It is contended that in the earlier orders, the applicant had shown willingness to incur the charges for the “change over switch” and other charges as per the rules, which does not include the cost and charges for establishing a Dedicated Distribution Facility (“DDF” for short). It is submitted that thus the insistence of MSEDCL on the applicant paying DDF charges is not proper.

5. The learned counsel has pointed out that the orders passed by the Commission on 08.09.2006 and 16.02.2008 that DDF charges cannot be imposed on the consumer, were not pointed out to this court, when the order dated 22.01.2020 was passed.

6. Mrs. Baxi, the learned counsel for the respondent pointed out that an electricity connection is already released in favour of the applicant and the present dispute pertains to the release of the second electricity connection. The learned counsel has pointed out

order dated 02.05.2019 passed by the Commission in Case No. 352 of 2018 and in particular paragraph 22.8 thereof, in order to submit that even the Commission has noted that the applicant had agreed to incur the charges under DDF scheme, if alternate connection is given by MSEDCL. It is submitted that the said order dated 02.05.2019 is subject matter of challenge at the instance of the applicant before the Electricity Tribunal at New Delhi.

7. I have carefully considered the circumstances and the submissions made. At the outset, it is necessary to note that the order dated 22.01.2020 was passed after hearing both the parties while granting rule in the petition. For this reason alone, it is not possible to revisit the said order particularly in the absence of any subsequent development and/or material change in circumstances. That apart, it prima facie appears that the petitioner had made the following statement before this court (Revati Mohite Dere,J.). The order 28.09.2018 reads thus:

- 1) *Heard learned counsel for the parties.*
- 2) *By this petition, the Petitioner has impugned the order dated 14.05.2018 passed by the Maharashtra State Electricity Regulatory Commission (Consumer Grievance Redressal Forum, Baramati).*

3) *At this stage, no case is made out for grant of any interim relief.*

4) *Learned counsel for Respondent No.1 on instructions states that he will bear the charges of 'change over switch' and all other charges as per the rules. Statement accepted.*

5) *Matter to be listed on 25th October, 2018, at the end of the admission board for final disposal."*

(emphasis supplied)

8. On 06.11.2019 this court (Revati Mohit Dere, J.) has made the following order:

"Heard learned counsel for the parties.

2. The matter has been circulated by the applicant (original respondent no.1) for clarification of the statement made by the applicant's counsel in paragraph 4 of the order dated 28th September, 2018. Learned Counsel for the applicant (original respondent No.1) states that he had agreed to bear the charges of 'change over switch' and all other charges as required for the said 'change over switch', as per the rules.

3. It is made clear that the learned counsel for the applicant (original respondent No.1) on instructions had made a statement that he would bear charges of 'change over switch' and all other charges required for installation of the said 'change over switch' as per the rules. The same is clarified as above to the extent aforesaid.

4. The matter to be placed before the regular Court, taking up the said assignment."

9. Prima facie the issue appears to be whether the petitioner is only liable to pay the charges for installation of a “change over switch” or charges for establishment of DDF which according to the applicant, the MSEDCL is insisting for. Such a question, in my considered view can evidently be gone into while hearing the petition. Prima facie, it appears from the paragraph 22.5 of order passed by the Commission on 02.05.2019 that the Commission had refused to accept that the applicant was not liable to pay the charges for DDF scheme. That order is said to be subject matter of challenge in an appeal before the Electricity Tribunal at New Delhi.

10. It is necessary to note that by order dated 22.01.2020, liberty is granted to the respondent to pay the amount of estimate as raised, under protest upon which the petitioner is required to release the connection. This will evidently be subject to the outcome of the petition.

11. Considering the over all circumstances, in my view, no case for review/modification of the interim order is made out. In the result, the Interim Application is dismissed.

12. Needless to mention that the observations herein are only for the purpose of deciding the application for review and the Electricity Tribunal shall not be influenced by the same in the appeal.

C.V. BHADANG, J.