IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.52/2012 IN WRIT PETITION NO.4059/2010(D)

APPELLANT:- M/s. Shri Steel Casting Pvt. Ltd.
Plot No.T-38-A, MIDC Hingna, Nagpur.
Through its Director.

-versus-

RESPONDENTS :-1. Maharashtra State Electricity Distribution Company Limited, through its Superintending Engineer / Executive Engineer MIDC Division, Hingna, Nagpur.

2. Consumer Grievance Redressal Forum, MSEDCL Nagpur, Urban Zone, Prakash Bhavan, Link Road, Sadar, Nagpur-440 001.

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Shri H.R.Gadhia, Advocate for appellant.
Shri S.V.Purohit, Advocate for respondent no.1.

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CORAM : A. S. CHANDURKAR AND G.A.SANAP, JJ.
Date on which the arguments were heard : 11.10.2021.
Date on which the judgment is pronounced : 29.10.2021

Judgment : (Per A.S.Chandurkar, J.)

This appeal under Clause 15 of the Letters Patent takes exception to the judgment of learned Single Judge dated 21.06.2011 in Writ Petition No.4059/2010. By the said judgment the learned Single Judge was pleased to set aside the orders dated 10.03.2010 and 26.03.2010 passed by the Consumer Grievance Redressal Forum, Nagpur-CGRF.

2. The facts in brief are that the appellant is a factory situated at MIDC, Hingna, Nagpur. The said factory is High Tension-HT Consumer

connected on 33 KV contract demand from 05.06.1995. The respondent no.1-Maharashtra State Electricity Distribution Company Limited (MSEDCL) in its meeting held on 21.03.2009 resolved that a consumer connected on express feeder could opt for non-continuous tariff with the consent of all the consumers. Such choice was to be exercised within the stipulated period. The appellant approached the CGRF raising a grievance under the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 that its energy bills from 01.06.2008 be revised by applying non-express feeder tariff. According to the appellant though its feeder was not an express feeder, it was being charged with HT-I tariff applicable for express feeder. The MSEDCL filed its reply and took the stand that since the factory was connected to the 33 KV express feeder, it was rightly charged by applying express feeder tariff.

3. The CGRF on 10.03.2010 held that though the appellant was an HT consumer, another consumer being M/s. Nagpur Alloy Casting was also getting power supply from the same feeder as the appellant. In view of aforesaid it was held that the premises of the factory could not be treated as a contiguous premises and it was not on an express feeder. On that basis, it was held that the factory would have to be considered to be on non-express feeder. Accordingly, the grievance of the appellant was allowed and the MSEDCL was directed to revise all energy bills from 01.06.2008 till the date of the order by applying non-express tariff to the factory. Refund of excess

amount paid by the factory was also directed. The aforesaid order was clarified by the CGRF by issuing corrigendum on 26.03.2010. The original order dated 10.03.2010 was modified by holding that the factory was entitled to revise all energy bills from 30.03.2009 since that was the date when the factory had filed an application for being charged non-express feeder tariff. The revision of energy bills was directed to be effected from 30.03.2009.

The MSEDCL challenged the aforesaid order in Writ Petition No.4059/2010. The learned Single Judge held that as per the tariff disclosing the consumption of power by the factory it was clear that power was consumed by the factory on Wednesday which was a staggering holiday for MIDC, Hingna, Nagpur. The fact that the factory was enjoying power even on staggering holiday indicated that the factory was a consumer that was supplied electricity by an express feeder. It was further held that the definition of the expression “Dedicated Distribution Facilities” (DDF) could not have been applied by the CGRF for concluding that the factory was a non-express feeder consumer. It was found that by issuing the clarificatory order, the CGRF had a doubt as regards application of the definition of DDF as well as whether the factory could be classified as a non-express feeder consumer. On that count the order passed by the CGRF was set aside and it was clarified that the factory could file an application for conversion to HT-I non-continuous. It is this judgment which is challenged in the present Letters Patent Appeal.

4. Shri H.R.Gadhia, learned counsel for the appellant submitted that the learned Single Judge was not justified in setting aside the order passed by the CGRF. According to him, in view of the order dated 12.09.2008 passed by the Maharashtra Electricity Regulatory Commission in the matter of applicability of HT-I it was clear that the consumer getting supply on express feeder could exercise his choice between continuous and non-continuous supply once in the year within the first month after issuance of the tariff order. It was clear that only HT-I industries given continuous supply were liable to pay tariff as per express feeder and other consumers were to be treated as HT non-continuous feeder. In accordance with the aforesaid order the CGRF had rightly held that the factory did not fit in the category of express feeder and it had to be considered as on non-express feeder. It was rightly held by the CGRF that only HT industries connected on express feeder and demanding continuous supply were governed by the order passed by the Maharashtra Electricity Regulatory Commission on 12.09.2008. Since the factory was not connected on express feeder, the said order was not applicable to it. As regards non-observance of staggering holiday as found by the learned Single Judge, it was urged that the same would not be determinative of the category in which the factory was to be charged tariff. If the conditions of supply were breached, the MSEDCL would have taken action against the factory by imposing fine, etc. Moreover it was clear that since another consumer was also getting power supply from the same feeder, the factory could not be considered as a consumer on

express feeder. In support of his contentions the learned counsel sought to rely upon paragraph 13 of the order dated 03.01.2018 passed by Maharashtra Electricity Regulatory Commission in Case No.12/2017 to indicate that the MSEDCL was engaging unnecessary litigation on this point. It was thus submitted that the judgment of the learned Single Judge was liable to be set aside and the order passed by the CGRF ought to be restored. According to him, in view of subsequent events the disputed period for revision of energy bills was for the period from 30.03.2009 to 27.09.2010.

5. Shri S.V.Purohit, learned counsel for the MSEDCL supported the judgment of the learned Single Judge. According to him, the reasons assigned by the learned Single Judge for setting aside the order passed by the CGRF were legally correct not requiring any interference. The factory was engaged in continuous process and was consuming electricity even on Wednesday which was a staggering holiday for MIDC Hingna. This was clear from the bills of consumption in the months of October, November and December 2009 which indicated that on almost every Wednesday the factory had consumed electricity. He further submitted that DDF and express feeder were different and the term 'DDF' as defined in Clause 2(l) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2014 could not have been applied in the present case. The term "express feeder" was not defined and considering the continuous supply of electricity, the energy bills by applying express feeder tariff were rightly

issued to the factory. Referring to Commercial Circular No.88 dated 26.09.2008 that was issued pursuant to the order of the Maharashtra Electricity Regulatory Commission dated 12.09.2008, it was submitted that the factory had made an application only on 30.03.2009 for grant of non-continuous supply which request was thereafter accepted. It was therefore submitted that no interference with the impugned judgment was called for.

6. We have heard the learned counsel for the parties at length and we have perused the material on record. We have also gone through the affidavits filed by both parties in the Letters Patent Appeal. The grievance raised by the factory was for revision of energy bills and it was prayed that non-express feeder tariff be applied to the factory. The factory was being charged HT-I express feeder tariff as per tariff order applicable from 01.06.2008. According to the CGRF since there was one more consumer being supplied electricity from the existing 33 K V line, it could not be said that the factory was a consumer of express feeder. This aspect has been considered by the learned Single Judge. The fact that the definition of the expression "DDF" though not strictly applicable took within its sweep group of the consumers on the same premises or contiguous premises was noted. It is further seen that in the months of October, November and December, 2009 the factory consumed electricity on each Wednesday thus indicating that there was continuous supply of power without following the staggering holiday. It is on this basis that it has been observed by the learned Single Judge that the factory was a consumer served by an express feeder.

The fact that the factory consumed electricity even on staggering holidays has not been disputed by the factory but it was urged that the same at the most attract penalty or some action for breach of the conditions of supply. We find that the aforesaid aspect has been rightly considered by the learned Single Judge for drawing a conclusion that the factory was a consumer served by an express feeder. The issuance of clarificatory order by the CGRF has also taken into account in that regard.

7. We therefore find that the learned Single Judge has considered all relevant aspects that were urged by the parties in support of their respective contentions. Similar contentions as raised before the learned Single Judge were sought to be reiterated in the present proceedings. We however do not find any justifiable reason to take a different view from the one taken by the learned Single Judge in absence of any case being made out for interference.

We do not find any merit in the appeal. Accordingly, the Letters Patent Appeal stands dismissed leaving the parties to bear their own costs.

JUDGE **JUDGE**

Andurkar..