

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12693 OF 2016

1. Maharashtra State Electricity Distribution
Company Ltd. Division Office Urban, Dhule,
Through Executive Engineer.

2. Executive Engineer & Nodal Officer
Maharashtra State Electricity Distribution
Company Ltd., Circle Office, Dhule.

PETITIONERS

[Orig. Respondents]

VERSUS

M/s. Om Shree Agro-Tech Ltd.,
C-32, MIDC, Avdhan, Dhule,
Tq. And District- Dhule

...RESPONDENT

[Orig. Complainant]

Mr. Avishkar Shelke, Advocate for Petitioners.

Mr. Mukul Kulkarni, Advocate for Respondent.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of parties.

2. The petitioners challenge the order passed by the Electricity Ombudsman in Representation No. 70/2016, filed by the respondent.

3. The petitioner No. 1 is electricity distribution company and respondent is HT consumer with contract demand of 900 KV-A availing power supply through 11 KV-HT feeder.

4. During meter testing of respondent on 31.08.2006 it was found that the meter Y-Phase PT was absent on meter display. Therefore, joint inspection of meter equipment was done in the presence of officials of petitioners company, consumer representative and representative of L & T Company on 19.09.2006. In the joint inspection, it was confirmed that there is error in recording of meter due to meter PT fault. Accordingly, plain assessment (supplementary bill) of Rs. 21,22,110/- was issued to the respondent for the period of 17.05.2005 to August 2006. The same was challenged by the respondent by filing Regular Civil Suit No. 256/2006. The suit was decreed in favour of the respondent. Appeal filed by the petitioners is dismissed and the petitioners have filed second appeal which is pending in this Court.

5. The faulty meter of the respondent was replaced in the month of December 2006. For the month of September 2006 to

December 2006, separate assessment is charged in respect of monthly bills. The assessment was worked out for the period September-2006 to December-2006 by correcting the meter error factor to 49% which was calculated at Rs. 22,96,000/- as principle arrears along with interest arrears of Rs. 4,51,648/- towards delayed payment charges (DPC).

6. The respondent approached Consumer Grievance Redressal Forum (CGRF) challenging the order of IGRC. The CGRF disposed of the grievance filed by the respondent holding that as First Appeal No. 138/2018 is pending before the District Court, as per regulation 6.7(d), the forum cannot go into the demand raised by the company.

7. The respondent, thereafter, approached Electricity Ombudsman by filing Representation No. 70/2016. By the impugned order, the representation is partly allowed. Hence, the present petition.

8. Heard the learned advocate for the petitioners and learned advocate for the respondent. Perused the documents placed on record by the both the parties.

9. The learned advocate for the petitioner submits that the impugned order is not passed on merits. Merely, because the respondent had shown willingness to pay principle amount with interest and also agreed to bear 50% of DPC levied by the respondent-MSEDCL till the date of filing of grievance, the Ombudsman has erroneously proceeded to partly allow the representation and directed the petitioners to recover only 50% DPC payable till February-2016. His submission is that the same has caused losses to the petitioners as DPC amount of almost 10 years is to be recovered from the respondent and only 50% is permitted to be recovered without there being any reason assigned in the impugned order. He submits that, the Ombudsman ought to have decided the matter on merits, considering the aspect that the respondent had approached belatedly. He therefore, submits that the impugned order is liable to be quashed and set aside and the matter may be remanded back to the Ombudsman for decision on merits.

10. The learned advocate for the respondent on the other hand supports the impugned order by pointing out the observations of the Ombudsman in para 12. He submits that the point of limitation

has rightly dealt with by the Ombudsman and the representation was rightly considered by the Ombudsman. He further submits that huge amount of Rs. 52,81,130/- towards 50% DPC is paid by the respondent on 11.11.2016. The Civil Court has already held in favour of the respondent. In that view of the matter, the Ombudsman was justified in passing the impugned order. He submits that there is no substance in the petition, the same may be dismissed.

11. While deciding the representation of the respondent, the Ombudsman has observed that “it is however not necessary to go into the merits of the same.....”. It is thus clear that, the order is not passed on merits and it is passed only by considering the offer of the respondent to pay principle amount together with interest and 50% of DPC levied by the petitioner till the date of filing grievance before IGRC on 22.02.2016. No reason whatsoever is assigned for not deciding the matter on merits. The Ombudsman ought to have decided the matter on merits. Since the same is not done, I am inclined to accept the submission of learned advocate for the petitioners that the impugned order is not passed on merits and it needs to be quashed and set aside and on that ground alone the matter is required to be remitted

back to the Ombudsman for decision on merits.

12. In the result, the impugned order is hereby quashed and set aside. The matter is remanded back to the Electricity Ombudsman, who shall decide the matter in accordance with law on its own merits after hearing the parties, within a period of three months from the date of receipt of this order.

13. Needless to mention that respective contentions of the parties are kept open and this Court has not expressed any opinion on the merits of the matter.

14. Rule is made absolute in above terms. No costs.

[NITIN B. SURYAWANSHI]
JUDGE