Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.198 OF 2020

1 THE CHIEF ELECTRICAL ENGINEER, ... Petitioners
Electricity Department, Government of Goa,
Vidyut Bhavan, Panaji, Goa- 403 001.

2 THE EXECUTIVE ENGINEER,
Division VI,
Electricity Department, Government of Goa,
Mapusa, Goa.

3. THE ASSISTANT ENGINEER,
Sub-Division III,
Division VI, O & M,
Electricity Department, Government of Goa,
Mapusa, Goa.

VS

MARIO VALADARES ... Respondent
R/O. H. No. 33/C,
Opp. Nissan Showroom,
Pirni, Verna, Salcete, Goa.

Mr. Deep Shirodkar, Additional Government Advocate *for the Petitioners – State*

Mr. Rohan Desai, Advocate *for the Respondent.*

CORAM: M.S. SONAK &
R.N. LADDHA, JJ.

DATED: 5th April, 2022

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

Heard Mr. Deep Shirodkar, learned Additional Government Advocate for the petitioners- State and Mr. Rohan Desai, learned Counsel appearing for the respondent.

2. On 02/03/2022 we had made the following order:

> 1. *The records indicate that service is complete before admission. However, the respondent does not appeared in the matter.*
>
> *2. Mr. Shirodkar, learned Additional Government Advocate points out that the issue raised in this petition is covered by the decision of the Hon'ble Supreme Court in the case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and ors v/s. Rahamatullah Khan [(2020)4 SCC 650]*
>
> *3. Accordingly, we direct fresh notice to the respondents, this time, indicating that this petition will be taken up for final disposal at the stage of admission itself.*
>
> *4. In addition to the usual mode of service, private service is also permitted. The petitioner to file an affidavit of service.*
>
> *5. Stand over to 05/04/2022."*

3. Accordingly, we issue Rule and make the Rule returnable forthwith at the request and with the consent of the learned Counsel for the parties.

4. The challenge in this petition is to the orders dated 06/06/2017 and 10/04/2018 made by the Consumer Grievances Redressal Forum (CGRF), Government of Goa constituted under Section 42(5) of the Electricity Act, 2003 (said Act).

5. Mr. Desai, learned Counsel for the respondent-consumer pointed out that the petitioners have an alternate and efficacious remedy of questioning the aforesaid orders before the Ombudsman in terms of Section 42 (6) of the said Act. Sections 42(6) and 42(7)of the said Act read as under :

> *"6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.*
>
> *(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission."*

6. From the aforesaid, it is quite clear that it is only the consumer who is aggrieved by the non-redressal of his grievances under sub-Section 5 of Section 42 of the said Act who has been given an opportunity to make a representation for redressal of his grievance to an Authority to be known as Ombudsman to be appointed or designated by the State Commission. Such an Ombudsman shall then settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission. The petitioners in the present case are not the consumer. Therefore, there is no bar to our entertaining this petition based upon the objection now raised by the consumer.

7. Mr. Rohan Desai then submitted that this petition, insofar as it challenges the order dated 06/06/2017 is barred by delay and laches. He submits that the order dated 06/06/2017 had directed the petitioners to grant the consumer reasonable opportunity and thereafter decide the issue of multiplying factor and type of load is concerned and based thereon issue subsequent bills. He pointed out that the issue of bills already issued for the period between 2011 and 2016 was already concluded as barred by limitation. He submits that the petitioners, by misinterpreting this order dated 06/06/2017 attempted to reopen even the issue of the bills or demands which were already held by the CGRF as barred by limitation. He pointed out that the petitioners were therefore constrained to once again apply to the CGRF and CGRF was equally constrained to set aside the renewed demands of the petitioners by its order dated 10/04/2018. He submitted that in such circumstances, the petitioners' challenge to the earlier order dated 06/06/2017 was barred by delay and laches.

8. Mr. Shirodkar, learned Additional Government Advocate invited our attention to the averments in paragraphs 13 and 14 of this petition which read as follows:

> *"13. The Petitioners state that the first impugned Order was not challenged at that stage since the same had permitted the Department, with regard to multiplying factor and type of load, to re-inspect the consumer's installation in terms of the Rules and Regulations and issue subsequent bills after giving the Respondent an opportunity to give his say in the matter. The Petitioners, therefore, felt that it was open to re-inspect and issue Bills in accordance with the law, more particularly since the CGRF had also given a finding that Section 56 was not attracted.*
>
> *14. The Petitioners state that On 11.8.2017, there was an inspection held by the MRT Unit in presence of the Respondent's representatives wherein various observations were made. Based on the same, a letter dated 25.9.2017 was addressed to the Respondent*

informing that MF was not applied to the billing. The bills of both the installations were forwarded to the Respondent.

Annexed hereto and marked ***Annexure G*** *is a copy of the letter dated 25.9.2017"*

9. Shri Shirodkar submitted that since an additional opportunity was granted to the petitioners to rework the demands after giving the consumer an opportunity of being heard, the petitioners were advised not to challenge the first order dated 06/06/2017. He states that the first order dated 06/06/2017 had not even gone into the issue of Section 56(2) of the said Act which was the most crucial provision for determining whether the demand was barred or not. He submits that it is only when the CGRF made its second order dated 10/04/2018, the CGRF's position on its previous order dated 06/06/2017 became clear. He submits that this is not a case where the petitioners have slept over their rights. He pointed out that even this petition was instituted only on 01/10/2019 and in that sense, there is neither any delay nor laches involved.

10. In the facts of the present case, we are not prepared to hold that this petition is barred by either delay or laches. The explanation offered in paragraphs 13 and 14 of the petition is quite reasonable. The same has to be made good by Mr. Shirodkar.

11. In this case, even if we proceed on the basis that the petitioners i.e. the Departmental Officers were not entirely right in their understanding of the scope and import of the CGRF's first order dated 06/06/2017, we cannot say that their interpretation or understanding was actuated by any malafide or oblique purposes. In fact, their interpretation or construction though not entirely correct, was certainly a plausible interpretation or construction. The true scope and import of CGRF's first order dated 06/06/2017 was realised by the petitioners only after the first order was interpreted or rather reiterated by the CGMF in its second order dated 10/04/2018. Therefore, this is not a case where the petitioners have either slept over their rights or acted in an indolent manner.

12. Besides this is a case where both the orders i.e orders dated 06/06/2017 and 10/04/2018 have been challenged by instituting this petition on 01/10/2019. This is not a case of some unreasonable delay and in any case, the delay has been sufficiently explained. Thus, we are not prepared to reject this petition on the ground of delay and laches as well.

13. Now coming to the merits of the challenge to the first order dated 06/06/2017, we find the same warrants interference at least on two grounds. The first ground is that the CGRF, in paragraph 17 has nearly gone by some correspondence on record and concluded that there was a *volte-face* on the part of the departmental officers on the issue of applicability of multiplying factor 40 (MF 40). Secondly, the CGRF has purported to answer the issue of limitation by simply observing that the department has not explained the delay of five-and-half years (between April 2011 and October 2016) to correct the billing errors and recover the unbilled amounts. The CGRF has specifically held that it does not find it necessary to delve into the judicial pronouncements on the issue of Section 56. The CGRF even seeks to suggest that the provisions of Section 56 of the said Act might not even be attracted to a case of this nature. According to us, both the issues that are the issue of applicability of MF40 and the issue of limitation could not have been disposed of in this manner. The CGRF was required to consider the material on record in its entirety and also consider the case of the petitioners that there was no serious dispute about the applicability of MF40 to the consumer's installation. In any case, CGRF was duty-bound to consider the provisions of Section 56 of the said Act because Section 56(2) is the precise Section which deals with the issue of limitation.

14. Mr. Shirodkar also pointed out that the Honorable Supreme Court in the case of *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla*[1] has now interpreted the provisions of Section 56 of the said Act. He submits that in terms of this interpretation the obligation of a consumer to pay electricity charges arises after the bill is issued by the licensee company. The bills set out the time within which the charges are to be paid and if the consumer fails to pay the charges within the stipulated period, they get carried forward in the next bill as arrears. He also pointed out that Section 56(2) does not preclude the licensee company i.e. the petitioner in this case from raising the supplementary demand after the limitation period of 2 years but it only restricts the right of the licensee to disconnect the electricity supply due to non-payment of dues after the period of limitation of 2 years has expired, nor does it restrict other modes of recovery that may be initiated by the licensee company for recovery of the supplementary demand. He submits that this decision had not been delivered when both the impugned orders were made by the CGRF.

15. Considering the aforesaid circumstances we think that the interest of justice will be made if both the impugned orders are set aside and the matter is remanded to the CGRF for fresh adjudication of the respondent's first complaint/representation No.05/2017/47. This complaint would include the complaint regards the following three bills/ demands:-

1 ***2020 (4) SCC 650***

a. The departmental notices dated 31/10/2015 and 17/11/2016 and energy bills for an amount of ₹25,47,623/- inspection in relation to multiplying factor;

b. Bill dated 01/02/2017 for an amount of ₹ 26,81,971/-; and

c. the Department's demand for ₹ 52,29,594/- in pursuance of the order dated 06/06/2017 in the complaint/representation No.05/2017/47.

16. The respondent-consumer is also granted liberty to make a formal amendment in complaint/representation No.05/2017/47 to incorporate a formal challenge to the later demand to an amount of ₹52,29,594/-. Such amendment may be effected by placing an additional complaint/ representation on the record before CGRF in the complaint/representation No. 5/2017/ 47.

17. All contentions of all parties are left open to be determined by the CGRF. We request the CGRF to dispose of the matter as expeditiously as possible and if possible within 4 months from the date the parties file authenticated copy of this order.

18. Mr Shirodkar states that this order will be communicated to the CGRF so that the CGRF can fix a date for the appearance of the parties and thereafter proceed with the matter.

19. Rule in this petition is made absolute to the aforesaid extent. There shall be no order as to costs.

R.N. LADDHA, J. **M.S. SONAK, J.**

MEENA VISHAL BHOIR