

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.872 OF 2018

Maharashtra State Electricity Distribution Co. Ltd., O & M Division, through its
Executive Engineer, Gondia

Vs.

M/s Gupta Rice Industries at Tumkheda Tahsil Goregaon, District Gondia, through its
Proprietor.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. M. Quazi, Advocate for petitioner.

Mr. A. S. Mehadia, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/08/2022

1. Heard Mr. Quazi, learned counsel for the petitioner and Mr. Mehadia, learned counsel for the respondent.

2. The petition challenges the order dated 31.7.2017 passed by the Consumer Grievance Redressal Forum (CGRF) whereby the bill as raised upon the respondent consumer for the period from November 2013 to December 2016 by the letter dated 25.1.2017 is quashed and so also the disconnection notice dated 3.5.2017 and the order of the IGRC dated 18.7.2017 is quashed and set aside. It is further directed that the respondent consumer may be categorized in MF-2 from 25.1.2017, the date of first notice to the applicant.

3. Mr. Quazi, learned counsel for the petitioner submits that the categorization of the respondent from MF-1 to MF-2 has already been effected from November 2013, however because of a computer error, the categorization continued to be shown as MF-1 in the bill raised upon the respondent consumer. When this mistake came to be noticed in November 2016, the bill to that effect was raised demanding the arrears from 2013 to 2016 by way of communication dated 25.1.2017, and so also notice for disconnection was issued on 3.5.2017. This was challenged before the IGRC, which by an order dated 18.7.2017 rejected the challenge and granted installments for payment of the dues as claimed. Further challenge before the CGRF resulted in passing of the impugned order dated 31.7.2017 (page 47) wherein the above order has been passed.

4. It is contended by Mr. Quazi, learned counsel for the petitioner that considering the language of Section 56 (2) of the Electricity Act, it was permissible, for the petitioner to have made a claim for recovery of the dues in MF-2 category for a period of two years preceding the date of demand i.e. from 26.1.2015 and the order of the CGRF, which takes a view contrary thereto cannot be sustained. He submits that in so far as the arrears in MF-2 category earlier in point of time, it was also permissible for the petitioner to take appropriate steps for its recovery as permissible in law.

Reliance is placed upon *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan Alas Rahamjulla, [2020(4) SCC 650]* and so also the Full Bench of this Court in *Maharashtra State Electricity Distribution Company Ltd., Sindhudurg Kudal Vs. Electricity Ombudsman, Mumbai and another [2019 (2) Mh.L.J. 884]*.

5. Mr. Mehadia, learned counsel for the respondent does not dispute the proposition laid down in *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited (supra)* and the *Electricity Ombudsman (supra)*, he however, contends that the petitioner would not be entitled to recovery any amount whatsoever on the ground, that the same was result of the negligence on the part of the petitioner, which has resulted in waiver of the right to recover.

6. The Hon'ble Apex Court in *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited (supra)* has categorically held that Section 56(2) of the Electricity Act, did not permit the petitioner, to disconnect the electricity supply, it however permitted the petitioner for raising an additional or supplementary demand even after the limitation having been expired, under Section 56(2) of the Electricity Act, in case of mistake or *bona fide* error. However, this demand, under Section 56(2) could not exceed a period of two years as

contemplated by Section 56(2) of the Electricity Act and for satisfaction of the claim for the earlier period, it was open for the petitioner to take appropriate proceedings as permissible in law. The judgment of the Full Bench of this Court is also in consonance with what has been held by the Hon'ble Apex Court in ***Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited*** (supra). In light of what has been held by the Hon'ble Apex Court in ***Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited*** (supra), the disconnection notice dated 3.5.2017, has rightly been quashed by the learned CGRF. However, the order of the CGRF in so far as relates to quashing of the demand for the period November 2013 to December 2016 by its letter dated 25.1.2017 would run contrary to what has been held by the Hon'ble Apex Court in ***Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited*** (supra) in case the demand is restricted to a period of two years prior to the notice dated 25.1.2017. In that view of the matter, it is held that the petitioner would be entitled to raise a supplementary demand in MF-2 category upon the respondent from 26.1.2015 till 25.1.2017. In so far as the amount for the earlier period is concerned, the bill dated 25.1.2017 would not be legal and valid, however, it would be open for the petitioner to initiate appropriate proceedings for its recovery, if permissible in law. The directions as contained in para (e) and (f) of the order of the CGRF dated 31.7.2017 are hereby quashed and set aside.

7. The writ petition is accordingly allowed in the above terms. No costs.

JUDGE

Sarkate