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

**WRIT PETITION NO.7246 OF 2016**

M/s Sanvijay Rolling and Engineering Ltd.
Through its Director Shri Ajay Agrawal,
having its address at Plot No.09,
Imambada, Ghat Road, Nagpur-18. **...PETITIONER**

**---VERSUS---**

1. Maharashtra State Electricity Distribution Company Limited through its the Superintendent Engineer, MSEDCL, Nagpur Urban Circle, MSEDCL, Nagpur.

2. The Hon'ble Electricity Ombudsman, having its office at No.12, "Shreekrupa" Vijay Nagar, Chawni, Nagpur-13.

3. The Consumer Grievance Redressal Forum, Nagpur, Urban Zone, MSEDCL, Prakash Bhavan, Link Road Sadar, Nagpur-440 001. **...RESPONDENTS**

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Shri T.D. Mandlekar, Advocate for the petitioner.
Shri S.V. Purohit, Advocate for respondents.

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**CORAM : AMIT BORKAR, J.**
**DATE : AUGUST 04, 2022.**

**ORAL JUDGMENT :**

**1.** **Rule**. Rule made returnable forthwith. Heard finally by consent of the parties.

**2.** The challenge in this petition is an order passed by the

Electricity Ombudsman Nagpur dated 11th March 2015 partly allowing petitioner's representation. The Ombudsman has directed the licensee to allow 3% EHV supply rebate to petitioner from October 2013 onwards. The principal grievance of petitioner is the penalty imposed on him for September 2012 till September 2013.

**3.** Petitioner's case is that he had applied for sanction of additional load from 8000 kVA to 12000 kVA on 22nd August 2012. According to the petitioner, Section 43 (1) of the Electricity Act, 2013 (for short, the **"said Act"**) imposes a liability on the licensee to supply extension or commission within such period as may be prescribed by the appropriate Commissioner. Clause 4 of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, the period for Giving Supply and Determination of Compensation) Regulation, 2005 (for short, "**Regulation of 2005**") deals with the period for giving supply. According to petitioner, clause 4.7 imposes liability on the licensee to grant an extension of supply. The said clause also imposes liability to carry out an inspection within seven days from the date of application and intimate the charges to be paid by such applicant within thirty days from the date of submission of such application. Therefore, according to petitioner, within thirty days from the date of application, i.e. 22nd September 2012, it was obligatory on the part of the licensee to release an additional power supply as demanded by petitioner. According to petitioner, clause 4.4. of the Regulation of 2005 requires the licensee to inspect the premises and intimate the charges to be borne by the applicant no later than fifteen days from the filing date of such application. Therefore, according to petitioner, in case of failure to intimate supply sanction within thirty days, petitioner was entitled to utilize additional supply without a specific release of power supply by the licensee. According to petitioner, the delay caused by the licensee company till its actual release, i.e. till 29th October 2013, was deliberate and was caused with the intention to cause harm to the petitioner. Therefore, petitioner company was not entitled to charge any penalty for the use of additional supply. Alternatively, it is submitted that the licensee company, on 31st December 2012, had sanctioned load; therefore, the licensee company had no power to charge a penalty after the sanction of load.

**4.** *Per contra*, learned Advocate for licensee company submitted that learned Ombudsman had given cogent reason for rejecting the contentions raised on behalf of petitioner. However, the learned Ombudsman proceeded on the basis that unless the additional demand was sanctioned and released by the licensee company, petitioner consumer was not justified in utilizing the same. Therefore, the imposition of penalty was held to be proper. He, therefore, submitted that no interference in the impugned order is called for.

**5.** I have reflected on the submissions made on behalf of both sides. Accordingly, the undisputed facts, which are necessary for the purpose of adjudication of the controversy involved, are as under:

i. On 22nd August 2012, petitioner applied for an additional supply from 8000 kVA to 12000 kVA.

ii. On 31st December 2012, the licensee company sanctioned an additional load.

iii. On 29th October 2013, the licensee company released an additional supply of load of 12000 kVA to petitioner.

iv. The penalty levied is for the period September 2012 to September 2013.

**6.** According to petitioner, the duty to supply within a reasonable period is under 43(1) of the Electricity Act and Regulations 4.4 and 4.7 of the Regulation of 2005. Section 43(1) and 43(3) of the said Act read as under:

*"Section 43. (Duty to supply on request): ---*

*(1) Save as otherwise provided in this Act, every distribution licensee shall, on an application by the owner or occupier of any premises, give a supply of electricity to such premises within one month after receipt of the application requiring such supply:*

*Provided that where such supply requires an extension of distribution mains or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after the such extension or commissioning or within such period as may be specified by the Appropriate Commission:*

*Provided further that in case of a village or hamlet or area wherein no provision for the supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.*

*Explanation.--For this subsection, "application" means the application is complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.*

*(2) ...*

*(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."*

**7.** Regulations 4.4 and 4.7 read as under:

*"4.4 Where the supply to an applicant is to be given from an existing network of the Distribution Licensee, the Distribution Licensee shall intimate the charges to be borne by the applicant not later than fifteen days from the date of*

*submission of such application for supply in towns and cities and within twenty days from the date of submission of such application for supply in rural areas, regardless of whether such application is deemed to be complete under Regulation 4.2.*

*4.7 Where the supply to an applicant requires extension or augmentation of distributing main or commissioning of a new sub-station, the Distribution Licensee shall complete the inspection of premises within seven days and intimate the charges to be borne by such applicant within thirty days from the date of submission of such application for supply regardless of whether the application is deemed to be complete under Regulation 4.2."*

**8.** Undisputedly, the sanction letter dated 31$^{st}$ December 2012 was subject to conditions. The clause 6 of the sanction letter requires the consumer to submit permissions enumerated therein. Clause 6 reads as under:

*"6) SUBMISSION OF DOCUMENTS: You shall submit following permission/no Objection certificates/other documents (as per applicability) before release of supply:*

*(As applicable from following)*

*i. Clearance/NOC from MIDC*

*ii. NOC/Consent of MPCB*

*iii. NOC from Environment Department, Government of Maharashtra.*

*iv. Power of Attorney by way of a Resolution passed by the Board of Directors for putting common seal of the Company & Signature of the Director.*

> *v. Manufacturer's test certificate equipments.*
>
> *vi. Test Report of Electrical Contractors, along with list of machinery.*
>
> *vii. Permission from the concerned Electrical Inspector, Government of Maharashtra.*
>
> *viii. Authorisation for signing documents on behalf of the Company.*
>
> *ix. Any Such other documents/Certificate/permission as may be directed by Chief Engineer (NUZ), MSEDCL, Nagpur/S.E.,NRC, MSEDCL, Nagpur."*

**9.** Clause 16 of the sanction letter requires acceptance of conditions of supply by the consumer. Clause 16 the sanction letter reads as under:

> *"16) ACCEPTANCE: You shall submit your acceptance in writing to the above terms & conditions of power supply and acceptance letter, to this office. In case of any doubt/ difficulty, of if any clarification is required, you may contact to this office on any working day during working hour."*

**10.** On careful perusal of the conditions in the sanction letter, the said sanction letter cannot be construed to mean that the consumer is entitled to utilize additional load the moment the sanction letter is issued. The consumer was entitled to utilize additional load upon fulfilling conditions and the licensee company's specific release of the load. Undisputedly, the release of the additional load was on 29th October 2013. The licensee company has imposed a penalty for a period for September 2012 to September 2013. The tariff order issued in exercise of power under Section 62 of the said Act authorizes the licensee company to charge a penalty for exceeding contract demand. The relevant tariff order authorizing the penalty reads as under:

> *"Penalty for exceeding Contract Demand*
>
> *In case a consumer (availing Demand based Tariff) exceeds his Contract Demand, he will be billed at the appropriate Demand Charge rate or the Demand recorded and will be additionally charged at the rate of 150% of the prevailing Demand Charges (only for the excess Demand over the Contract Demand).*
>
> *In case any consumer exceeds the Contract Demand on more than three occasions in a calendar year, the Supply Code would govern the action taken in such cases."*

**11.** Therefore, the Ombudsman was justified in rejecting the petitioner's contention that because of deliberate delay on the part of the licensee company, the licensee company was not authorized to impose the penalty.

**12.** The first submission on behalf of petitioner is that the Ombudsman has not considered Section 43(1) of the said Act. However, it is correct that the Ombudsman has not considered Section 43(1) of the said Act. However, the Ombudsman has recorded the finding that in the absence of sanction by the competent authority, the additional power supply could not have been utilized by petitioner. In my opinion, the delay on the part of the licensee company in supplying the additional load has no bearing on the authority of the licensee to impose a penalty for utilizing the additional load. If there is a delay on the part of the licensee company to supply load or additional load, the remedy available to the consumer is provided by the legislature under Section 43(3) of the said Act. Only because there is a delay on the part of the company to supply additional demand, unilaterally, the consumer is not entitled to use additional demand. The tariff order does not contemplate anything which creates a right in favour of consumers to utilize additional load demand without being sanctioned by the licensee company.

**13.** Learned Advocate for petitioner next submission is that bill of ₹16 crores was waived before this Court, and therefore the delay on the part of licensee company is not justified.

Since I am not going into the aspect of delay in supplying the additional load, the issue of arrears of ₹16 crores need not be commented on in the present petition.

**14.** Insofar as the reliance placed on Regulations 4.4 and 4.7 are concerned, true it is that the regulations cast obligations on the licensee company to supply electricity as provided therein. However, the breach thereof does not dis-entitle the licensee company from imposing a penalty for unauthorized use of additional load. The consumer's remedy in case of breach of Regulations 4.3 and 4.7 is somewhere else the same does not preclude the licensee company from imposing a penalty under Tariff Order. Therefore, the view taken by the Ombudsman cannot be said to be a perverse view. As a result, no interference in the impugned order is called for. The petition is, therefore, dismissed. No order as to costs. Rule stands discharged. Pending civil application (s), if any, stand disposed of.

**JUDGE**

*Wagh*