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

<u>WRIT PETITION NO. 8265 OF 2017</u>

Maharashtra State Electricity Distribution Company Ltd.(MSEDCL)

vs.

M/s. Sainath Packaging Products Pvt. Ltd. and another

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. S. V. Purohit, Advocate for the petitioner.
Mr. Firdos Mirza, Advocate for respondent No.1.

<u>CORAM</u> : MANISH PITALE J.
<u>DATE</u> : 22/03/2022

By this writ petition, the petitioner Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) has challenged order dated 26/10/2017, passed by the Electricity Ombudsman, Nagpur, whereby on a representation made by the contesting respondent No.1 i.e. consumer, an order passed by the Consumer Grievance Redressal Forum (CGRF) has been set aside, the revised bill has been quashed and the petitioner has been directed to refund amount of Rs.2.6 Lakh with interest to the respondent No.1.

2. The facts in brief leading upto filing of the present writ petition are that – on 04/10/2016, the petitioner conducted inspection of the premises of respondent No.1. A report pursuant to the inspection recorded that the respondent No.1 was not billed as per proper time zone and therefore, the bills raised on the respondent No.1 were for amounts less than the amounts which the respondent No.1 was liable to pay as per time of day billing. The assessment period relevant for the said inspection was fixed as 04/10/2013 to 04/10/2016. On the basis of the said report, the petitioner raised a further bill of Rs.04,58,041/- [Rupees Four Lakh Fifty Eight Thousand and Forty One only] to be paid by the respondent No.1.

3. The respondent No.1, aggrieved by the action of the petitioner – MSEDCL, approached the Internal Grievance Redressal Cell (IGRC) under the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006. The respondent No.1 contended that it had paid all the bills that were raised by the petitioner company and that in the absence of billing on the time of day principle, there was no question of any arrears payable by the respondent No.1. IGRC did not agree with the aforesaid contentions raised on behalf of respondent No.1, but found that the claim of the petitioner towards recovery for the period of three years was not sustainable. It was found that under Section 56(2) of the Electricity Act, 2003, such claim could be raised for a maximum period of two years. On this basis the grievance application of the respondent No.1 was partly allowed and the petitioner was directed to raise the claim only for the period of two years preceding 04/10/2016 and to issue corrected bill. On this basis, the amount payable by the respondent No.1 came down to Rs.2.6 Lakhs.

4. The respondent No.1 was not satisfied with the order of the IGRC. Hence, it filed an application before the Consumer Grievance Redressal Forum (CGRF) to challenge the said order. The said application was dismissed and order of the IGRC was confirmed.

5. Aggrieved by the same, the respondent No.1 consumer moved a representation before the Electricity Ombudsman at Nagpur under the aforesaid Regulations. By the impugned order dated 26/10/2017, the Ombudsman found that the orders passed by the IGRC were not sustainable for the reason that Time Of Day (TOD) Meter was not installed in the establishment of respondent No.1 and that therefore, there was no basis for the petitioner to have raised the subsequent bill on the basis of TOD tariffs. The Ombudsman set aside the orders passed by the IGRC and directed the petitioner to repay the amount of Rs.2.6 Lakhs, which was deposited by the respondent No.1 with the petitioner. It was directed that the said amount shall carry interest.

6. Aggrieved by the same, the petitioner has moved the present writ petition, wherein notice was issued. The respondents entered appearance through counsel.

7. Mr. Purohit, learned counsel appearing for the petitioner, submitted that the order passed by the Ombudsman is not sustainable for the reason that there was no dispute about the fact that the respondent No.1 establishment had consumed electricity for the period in question prior to the inspection conducted on 04/10/2016. It was submitted that even if the TOD Meter was not installed, as long as there was no dispute about consumption of electricity through the day, the respondent No.1 consumer was liable to pay TOD tariff.

8. It was submitted that the petitioner itself had refrained from billing the respondent No.1 for the relevant period in time zone 'C' and bill towards additional payment was raised only by applying time zone 'B'. On this basis, it was submitted that the impugned order deserved to be set aside.

9. Mr. Firdos Mirza, learned counsel for the respondent No.1 supported the impugned order passed by the Ombudsman.

10. Heard learned counsel for the rival parties. Perused the material on record. The only question that arises for consideration is, as to whether the Obudsman was justified in setting aside the orders passed by the authorities below and directing refund of amount with interest to the respondent No.1, on the basis that in the absence of installation of TOD meter in the establishment of respondent No.1, the petitioner could not have insisted upon applying TOD tariffs.

11. The learned counsel appearing for the petitioner while assisting this Court, invited attention of this Court to bills that are raised to consumers after installation of TOD Meters. A perusal of the same shows that the units consumed during different time zones are recorded and tariff is calculated on the basis of TOD tariffs. It becomes clear from a perusal of the said bill that unless a TOD Meter is installed, there cannot be any assessment of the units of electricity consumed during various time zones. It is only after installation of TOD Meters that the petitioner is able to record consumption of units of electricity during different time zones and this is the only basis on which bills can be raised applying TOD tariffs.

12. In the present case, admittedly, when the inspection was conducted on 04/10/2016, TOD Meter was not installed in the establishment of respondent No.1. In fact, it is recorded in the impugned order passed by the Ombudsman that such TOD Meter was installed eventually in the establishment of respondent No.1 much later, on 07/04/2017. Thus, it becomes clear that when the petitioner prepared the report of inspection pertaining to the assessment period of 04/10/2013 to 04/10/2016, TOD Meter was not installed on the establishment of respondent No.1. In the absence of installation of TOD Meter, there was obviously no record of the units of electricity consumed by the respondent No.1 during different zones. In the absence of such data, it is difficult to understand as to on what basis the petitioner raised the bill for an amount of Rs.04,58,041/- [Rupees Four Lakh Fifty Eight Thousand and Forty One only], as additional amount payable by the respondent no.1 for the aforesaid period. The IGRC as well as CGRF, even while granting partial relief to the respondent No.1 failed to appreciate this fundamental aspect of the matter. The Ombudsman correctly appreciated the facts of the present case and the most crucial aspect of the matter that in the absence of TOD Meter in the establishment of respondent No.1, there was no basis on which calculation of arrears payable by the respondent No.1 could have been made. In such a situation, it cannot lie in the mouth of the petitioner that the respondent No.1 was liable to pay amounts determined by IGRC and CGRF, because the petitioner had refrained from applying time zone 'C' and applied time zone 'B' to the establishment of the respondent No.1. Even if time zone 'B' was applied, in the absence of data to show the number of units of electricity consumed by the respondent no.1 during the said time zone for the period between 04/10/2013 to 04/10/2016, the petitioner could not have raised any bill for additional payment by the said respondent.

13. It is also not the case of the petitioner that there was any suppression of the fact by the respondent No.1 or that it was the respondent No.1 who was responsible for non-installation of TOD Meter.

14. In these circumstances, it is found that the impugned order passed by the Ombudsman cannot be found fault with and that the present writ petition is without any merit. Accordingly, the writ petition is dismissed.

15. At this stage, the learned counsel appearing for the petitioner submits that instead of refund of amount of Rs.2.6 Lakhs with interest as directed by the Ombudsman, the petitioner company would give credit to the respondent No.1 in future bills towards said amount. The respondent No.1 does not have any objection for such an arrangement. Hence statement made on behalf of the petitioner in that regard is recorded.

JUDGE