

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15025 OF 2022

Maharashtra State Electricity
Distribution Company Ltd

...Petitioner

V/s.

Vashi Fantasia Business Park
Premises Co-operative Society
Ltd.

..Respondents

Mr. Rahul Sinha a/w. Mr. Soham Bhalerao, i/by DSK Legal, for the
Petitioner.

Mr. G.S. Hegde, Senior Counsel i.by. Ms. Tanisha K. for the
Respondents.

CORAM : SANDEEP V. MARNE, J.

Reserved on : 2 November 2023.

Pronounced on : 8 November 2023.

JUDGMENT :

1. The case presents a unique conundrum - whether consumer, or a group of consumers can be forced by an Electricity Distribution Company to opt for High Tension (HT) connection against their desire to have multiple Low Tension (LT)

connections ? The question arises on account of refusal by Petitioning Company to provide 24 LT connections to group of office owners in a commercial complex for operation of Variable Refrigerant Flow (**VRF**) Group Air Conditioning Systems and its insistence that the Society formed by the office owners must operate the VRF or Centralized AC system (along with other common facilities) by opting for a single HT connection/meter. The Petitioning company insists that office owners in 'Vashi Fantasia Business Park' must subscribe to single H.T. connection of 480kW/240kW for operating the common Air Conditioning System in the offices located in the building. The office owners, on the other hand, have clubbed themselves together into 24 groups and have applied for 24 separate connections of 24 kW each for operating Air Conditioning system in their respective offices.

2. The issue arises on account of challenge set up by Petitioning Company to Orders passed by the Consumer Grievance Redressal Forum (**CGRF**) on 3 January 2022 in Case No.42/2021-22 and 29 July 2022 in Review Case No.183/2021-22.

3. The dispute essentially arises on account of the manner in which the building is constructed by the Developer, which initially envisaged operation of a Centralised Air Conditioning System without leaving any space for keeping individual outdoor compressor units. The Petitioning-Company sanctioned 40 meters/

connections to the building for operation of the Air Conditioning system, which according to it, was a mistake and that only a single H.T. connection ought to have been provided for operation of Centralised Air Conditioning system. On account of non-payment of electricity charges in respect of those 40 meters by the Developer, the said 40 meters/connections were permanently disconnected.

4. Faced with the situation of disconnection of electricity for operation of Centralised Air Conditioning System, the office owners installed individual Air Conditioners by placing Air Conditioning Compressor Units in the corridors of the building. The Fire Officer of the Navi Mumbai Municipal Corporation issued Notice directing removal of A.C. Compressor units kept in the corridors of the building. The Petitioning Company was also directed to ensure removal of A.C. Compressor Units from the corridors of the building.

5. The office owners thus faced a situation where the Centralised Air Conditioning System is inoperational and there is no space in the building to keep outdoor A.C. Compressor Units. They came together and formed 24 groups to install VRF Group A.C. Systems. The VRF System allows multiple indoor units to run on the same system through common compressor. In the present case, common compressors are proposed to be installed on the terrace of the building in order to solve the problem of fire hazard

caused due to placement of outdoor A.C. compressor units in the corridors of the building. The office owners accordingly made an application to the Petitioning Company for seeking 24 connections for supply to VRF group Air Conditioning Systems on 28 December 2020. The Sub-Divisional Office of the Petitioner replied vide letter dated 25 January 2021 advising the office owners to go for single HT connection as the load was crossing 150 kW stating that a single connection can be used for all amenities like light, waterpump, staircases, etc. Aggrieved by the Petitioner's refusal to provide 24 connections, Respondent-Society approached Consumer Grievance Redressal Forum (**CGRF**), MSEDCL Division by filing Case No.42/2021-22. Petitioner appeared before the CGRF and filed its reply. The CGRF passed order dated 3 January 2022 allowing the grievance and directed the Petitioning Company to provide 24 meters/connections to the Respondent-Society.

6. Petitioning Company sought review of CGRF's order by filing Review Case No.183/2021-22, which came to be rejected by CGRF by order dated 29 July 2022. Aggrieved by the decisions of the CGRF dated 3 January 2022 and 29 July 2022, the Petitioning company has filed the present petition.

7. Mr. Sinha, the learned counsel would appear on behalf of the Petitioning Company and invite my attention to Commercial Circular No.110, which according to him, bars provision of multiple meters/connections for use of common facilities. He would submit that VRF Air Conditioning System sought to be installed by the office owners of the Respondent-Society is by way of a common facility, for which multiple meters/connections cannot be issued. He would submit that the CGRF has erred in holding that absence of the word 'Air Conditioning' in the Commercial Circular No.110 would make it inapplicable to the present case. That the object behind issuing Commercial Circular No.110 is to provide common connection/meter for common facilities and therefore it is not necessary to name each and every facility for which common connection can be provided. According to him, the common connection facilities can be countless and the Commercial Circular No.110 does not include an exhaustive list of such common facilities.

8. Mr. Sinha would then rely upon provisions of Regulation No. 2.2.5 of the Conditions of Supply based on The Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (**Regulations**) in support of his contention that regardless of provisions of Commercial Circular No.110, Regulation No. 2.2.5 specifically prohibits provision of more than one independent

power supply connection for an identical purpose in common premise. He would invite my attention to the comparative chart presented before the CGRF showing loss of revenue to the Petitioning Company on account of provision of 24 separate connections as compared to single H.T. connection. He would pray for setting aside the orders passed by the CGRF.

9. Mr. Hegde the learned senior advocate appearing for the respondent society would oppose the petition and support the orders passed by CGRF. According to him, the Petitioning Company is unnecessarily insisting on provision of single HT connection when the office owners are merely attempting to solve the problem created by the developer in not providing space for keeping outdoor compressor units. That Commercial Circular No.110 has no application to the present case where 24 connections are not sought as a common facility for the entire society. That the said 24 connections are sought for providing air conditioning to individual offices. That therefore the Society, is not supposed to pay the electricity charges for air conditioning provided to individual offices. That the common facilities such as staircase, lift, water pump etc. cannot be placed on same pedestal as that of air conditioning in individual offices. He would submit that the action of the Petitioning-Company is otherwise discriminatory as it has from time to time provided L.T. connections to the Developer even

in common areas as and when demanded. He would pray for pray for dismissal of the petition.

10. Rival contentions of the parties now fall for my consideration.

11. Denial of 24 separate connections/meters for providing air conditioning facility to the office of the Respondent-Society is denied by the Petitioning company by essentially relying upon Commercial Circular No.110 dated 16 February 2010 and Regulation No.2.2.5. Petitioning company also complains that provision of 24 separate meters would cause revenue loss to it as compared to provision of single HT connection. This has been demonstrated by petitioning company as under :

	Case I : 24 LT Connections of 28 KW each Tariff Category – LT-II0A Avg.unit rate is Rs.7.36	Case II ; Nos. OF 150 KW Connections per floor. Tariff Category-LT-II-e. Avg.unit rate is Rs.12.83	Case III : Single HT Connection of 480 KW/240 KVA CD.Tariff Category – HT II-Commercial Avg. Unit rate is Rs.11.47
Total load in premises	Proposed 24 Connections of 20kW each for all AC systems	3 Nos of 150 KW LT connection for each floor	Single HT Connection of 480 KW.240 KVA CD
Expected consumption for one month	Proposed consumption through 24 meters= $1000*24=24000$	Approx 24000 units i.e. 8000 units per connection.	Approx 24000 units for HT Connection.
Energy bill for one	Through 24 meters= $11325*24=271800/-$	Through Connection 3	Through single HT Connection

month		159175*3=477525	Rs.461925
Required electrical infrastructure	Existing 3 nos of 1000 KVA Transformers will be loaded equally as 160 KW Load- 8 Connections will be released on each DTC.	Existing 3 nos of 1000 KVA Transformers will be loaded equally as 150 KW Load will be released on each DTC.	Additional Infrastructure for HT Connection needs to be created. Even Existing 1000 KVA DTC can be utilized for HT Connection.

12. It does appear that provision of single HT connection of 480 kW/240 Kva enables Petitioning company to earn higher revenues as compared to providing 24 separate connections of 24kW each. The issue is whether the revenue loss which may be suffered by Petitioning company by providing 24 connections/meters could be the only justifiable reason for insistence on of provision of single HT connection. It would be appropriate to refer the Commercial Circular No.110 dated 16 February 2010, on which much emphasis is placed by Mr. Sinha, which reads thus:

PR-3/TARIFF/ No-4778

DATE: 16 FEB 2010

COMMERCIAL CIRCULAR No. 110

Subject: Clubbing of common meters of Residential Housing Societies & Commercial Complexes.

In the Urban areas, fast development, is taking place and large construction activities are in progress. These construction activities mainly are for Residential & Commercial complexes. The MSEDCL plays important part in this development by providing power supply.

In many Residential Housing Societies & Commercial Complexes it is observed that separate connections for separate purposes i.e. common lighting, lift, water pump, stair case etc. are released. Though many of the Residential Housing Societies & Commercial Complexes pay their electricity by due date, there are many societies/ complexes, who do not pay for either one or two connections out of three provided for the common purpose. Despite disconnection for arrears, the Housing Societies/ Commercial Complexes may restore the supply from the connection which is live. Moreover, with the already over burdened O & M staff, the detection of such type of unauthorized use of electricity becomes difficult.

Prior to formation of MERC, separate connection to common lighting, water pump, lift and stair case used to be released and for which separate service line charges for each purpose was recovered. Need was not felt at that time for separate instructions for releasing such connections & applying specific category as such societies were very small in numbers, MERC has determined the "Schedule of Charges" w.e.f. 8th September 2006 wherein Commission has not permitted to recover Service Line Charges from prospective consumers and only Service Connection Charges based on the load applied for are recoverable. Also, the number of Housing Societies/Commercial Complexes have increased considerably and their growth rate is positive. It has become necessary to issue common guidelines for releasing such connection and applying uniform tariff category for all connections throughout the State.

In view of above, if only one common connection is provided for such type of Residential Housing Societies & Commercial Complexes, instead of giving separate three or four connections it will reduce expenses of manpower and materials, reduce cost of maintenance, increase revenue as the units used & registered in a single meter will attract higher slab of tariff. Prompt payment by such consumers is expected as default would result in disconnection, leading to stoppage of lift, Common area lighting & Water Pump service simultaneously. Also this will be in line with the MERC Regulations and MSEDCL's Commercial Circulars.

- 1) Common connection is to be given to Residential Housing Societies & Commercial Complexes for common lighting, lift, water pump and stair case etc. (This common connection should be 1 phase or 3 phase supply depending on the load applied.)
- 2) Residential/Commercial tariff as per main purpose of usage of electricity is to be made applicable to such common connection.

- 3) Existing separate connections in Residential Housing Societies & Commercial Complexes are to be clubbed in to one common connections in a phased manner within a period of 6 months.
- 4) IT System data to be updated immediately after amalgamation of the connections & proper bills are to be issued by field offices.

All field officers are requested to take due note of the decision and take necessary action accordingly.

Sign/-
Chief Engineer (Commercial)

13. Perusal of the Commercial Circular No.110 would indicate that the objective behind issuing the same was to essentially deal with cases where housing societies/complexes were not paying electricity charges in respect of one or two connections out of multiple connections provided for common purposes. It was observed by the Petitioning company that even if one or two of multiple electricity connections were disconnected on account of default, the housing society/commercial complexes were restoring supply from other connections which were live. Such modus adopted by the housing societies/commercial complexes was overburdening the operation and maintenance staff of the Petitioning company with the work of detection of such unauthorized type of use of electricity. It is essentially to tackle this situation that the Commercial Circular No.110 prescribed provision of one common connection for all types of residential housing

societies/commercial complexes instead of providing multiple connections. True it is that one of the objectives for providing single common connection is to increase revenue on account of attraction of higher slab of tariff through common connection. However reading of the Circular as a whole would indicate that earning higher revenues is not the main objective why the system of providing one common connection was introduced. The main objective is to prevent misuse of multiple connections by defaulting payment in respect one/two connections and enjoying uninterrupted supply through live connections.

14. CGRF has proceeded to discard Commercial Circular No.110 by holding that it has no application to the present case as the word 'Air Conditioning' is not reflected in the Circular. I am unable to agree with CGRF's finding in this regard. Common lighting, lift, water pump, staircases are just some of the inclusive items which are sought to be illustrated in Commercial Circular No.110. The said items are not exhaustive by any means. Infact as rightly suggested by Mr. Singh, if a housing society or commercial complex replaces staircase with escalators, the Petitioning company is not obliged to provide a separate electricity connection in respect of such escalators on the ground that the word 'escalator' is not to be found in the Commercial Circular. Expecting use nomenclature of each and every common facility for including in an exhaustive

list in the Commercial Circular No. 110 would be a skewed and myopic reading thereof. Therefore it was not necessary for the Petitioning company to provide an exhaustive list of common facilities for which single common connection needs to be provided under Commercial Circular No.110. Every common facility used by housing societies/complexes would be covered by Commercial Circular No.110.

15. The next issue is whether the provision of air conditioning facility to individual offices can be treated as a common facility for all members of a housing society/ commercial complex. According to Mr. Sinha any facility which is used by multiple members of a housing society/commercial complex would be a common facility and each such facility would be covered by Commercial Circular No. 110. Mr. Sinha would highlight cases of shopping complexes or malls where air conditioning system is a part of common facility. He expresses an apprehension that the impugned Orders of CGRF would be quoted by such malls and shopping complexes for claiming multiple meters/connections for different units or floors or sections. Mr. Hedge counters the apprehension stating that the cases of malls based on rental models cannot be compared with the present case where the offices are owned by individual owners. Though Mr. Sinha may not be entirely wrong in expressing the apprehension, the unique facts of

the present case would place the Respondent Society on a different pedestal than that of malls or shopping or office complexes.

16. Developer has provided Centralised Air Conditioning facility, for which Petitioning Company had provided 40 separate connections/meters. According to it, provision of 40 meters was a mistake and as it violated Commercial Circular No.110. Be that as it may. Now it has become academic to determine whether 40 meters could have been provided for operation of centralized air conditioning system on account of disconnection of those connections. The Centralised Air Conditioning System had become dysfunctional on account of disconnection of 40 electricity connections/meters due to unpaid electricity charges. The individual office owners were therefore forced to opt for installation of individual air conditioning units in their offices. Since the Developer has not constructed any space for placement of outdoor Air Conditioning Compressor Units, the office owners placed the same in the corridors and passages of the building. This caused fire hazard and the Planning Authority has issued notices to Respondent-Society as well as the Petitioning company directing removal of those individual outdoor AC compressors from the corridors and passages. It is on account of these facts that the office owners of the Respondent-Society have decided to opt for common VRF Air Conditioning System by forming 24 groups of office owners. Installation of such VRF Group Air Conditioning System

would enable them to place the outdoor compressor units on the terrace of the building. Each group would be responsible for payment of electricity charges in respect of that individual connection. In the event of failure on the part of one group to pay electricity charges for that connection, only that individual connection would get disconnected, thereby not affecting the other office owners. This is how the office owners have designed the system of VRF Group Air Conditioning. This is however not to suggest that in every building such arrangement must be permitted.

17. Petitioning Company has objection to such VRF Group Air Conditioning System and it insists that instead of separating the offices into 24 groups, the office owners must install a single VRF Group Air Conditioning System or a Centralised Air Conditioning System by obtaining a single HT electricity connection. Petitioning company is willing to provide H.T. single electricity connection, which apparently envisages payment of higher average commercial unit rate of Rs.11.47/- as against average unit rate of 7.36/- for 24 separate connections. Considering the nature of activity undertaken by the office owners of Respondent-Society, in my view, provision of air conditioning system to individual offices cannot be treated as a common facility by the society in the unique facts and circumstances of the present case. There is yet another unique circumstance in the present case. The Developer is apparently occupying the basement parking area as well as terrace which he has

started exploiting commercially. The Developer applied for two separate H.T. connections for basement parking area and terrace and the same has been provided by the Petitioning company to the Developer on 23 April 2019 and 6 April 2022. This action is branded as preferential treatment to the Developer by the Respondent-Society. Petitioning Company justifies provision of such connections stating that the same is for commercial usages made are actually in the nature of individual connections. Without going into the issue of discrimination, the situation that exists today is that there would be a separate meter for basement, separate meter for terrace (both could well be treated as common areas of the building), whereas the Petitioning company is insisting that one common H.T. connection must be procured for all other common facilities for providing electricity to common light, lift, waterpump, staircase and also Air Conditioning system. In my view, this would be unworkable arrangement in the unique facts and circumstances of the present case. Mr. Sinha has expressed a genuine difficulty of the Petitioning company that if such separate meters are permitted in the Respondent-Society, all other housing and business complexes would continue to demand separate connection for providing separate air conditioning facilities even when there is a Centralised Air Conditioning system in those buildings. In my view, the interpretation of Commercial Circular No.110 is restricted to present case in view of unique facts and circumstances and the same would not uniformly apply to all cases.

18. Reliance of Mr. Sinha on Regulation 2.2.5 of Regulation would not assist his case. Regulation 2.2.5 reads as follows :

2.2.5 MSEDCL shall not permit any Applicant / Consumer to have two or more independent power supply connections for an identical purpose in one common premise. In case the Applicant / Consumer intends to use the power supply in a common premise for two different purposes, like Domestic along with Non Domestic or General Motive Power along with Non - Domestic, etc.; the Applicant / Consumer may separately apply for independent power supply for each of such purposes, which the MSEDCL may permit provided release of such two connections to one common premise for different purposes is found technically feasible.

19. Careful perusal of Regulation 2.2.5 would indicate that the term 'one common premise' is used in the context of one flat, one shop or one godown etc. It does not refer to common facilities in the housing society or commercial complexes. Infact if the contention of Mr. Sinha that 'one common premise' is interpreted to mean only common facility of housing society/commercial complex, the same would enable provision of multiple electricity connections in one shop, in one flat or in one godown. Therefore, the correct interpretation of the term 'one common premise' would mean a single flat, shop or godown and not common facilities in a housing society/commercial complex. Thus Regulation 2.2.5 does not govern the situation of provision of meter/connection to common areas in housing societies or commercial complexes.

20. Mr. Sinha has placed reliance on the judgment of the Appellate Tribunal For Electricity, New Delhi (APTEL) in ***K. Raheja Corporation Versus. Maharashtra Electricity Regulatory Commission & Maharashtra State Electricity Distribution Co. Ltd.*** 2011 ELR (APTEL) 1170 in which the APTEL has referred to its previous order dated 24 May 2010 passed in Case No.62 of 2009 holding as under:

25. The Commission in its order dated 24th May, 2010 passed in Case No. 62 of 2009 observed as follows:

(V) Over the past two to three years, the Commission has come across similar problems primarily in case of existing Commercial and Office Complexes regarding supply at single point for distribution to mixed loads. In such cases, the distribution licensees have neither installed the individual meters nor the sub-distribution of electricity is being regulated in any manner. Though the Commission has directed the licensees to formulate a practical solution for this problem, there has not been any significant progress. Hence, the Commission is of the view that the practical solution being considered in the present case should be adopted for all such cases of supply at single point for further distribution to mixed loads, wherein one agency can be appointed as the Distribution Franchisee through the MoU route, and can supply to the individual users within the complex. This will ensure that all such cases will come squarely within the provisions of the EA 2003 which is not the case now.

Firstly, the order of APTEL would not bind this Court and secondly, the judgment does not, in any manner, seek to address the issue involved in the present case. The APTEL in the above judgment has decided the issue whether the Commission's orders directing discontinuance of single point supply was legal and valid. Therefore, the said judgment would have no application to the present case.

21. After considering the overall conspectus of the case, I find the order passed by the CGRF in the present case to be unexceptional. It is however clarified that the judgment is rendered in the unique facts and circumstances of the present case and cannot be cited as a precedent for cases involving different facts.

22. Writ Petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

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SANDEEP V. MARNE, J.