

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7217 OF 2018

Maharashtra State electricity Distribution
Company Ltd. (MSEDCL) ..Petitioner

Vs.

1.M/s.Technocraft Industries (I) Ltd.
2.M/s. Shanti Seva Nidhi
3. M/s. B. M. S. Industries Ltd. ...Respondents

Mr.Rahul Sinha i/b. DSK Legal, for the Petitioner.

CORAM : G.S. KULKARNI, J.
DATE : JANUARY 20, 2023

ORAL JUDGMENT:

1. Rule returnable forthwith. Respondents though served are not represented. Heard finally.
2. This petition assails an order dated 8 March 2017 passed by the Consumer Grievance Redressal Forum (for short ‘CGRF’), Kalyan Zone, constituted under the Electricity Act, 2003 (for short ‘the 2003 Act’) whereby by the CGRF although observed that it has no powers to review the orders passed by it on a complaint of the consumer-the Respondent herein, has passed the following detailed order, which is observed to be an order in the nature of a clarification:-

“1] Heard Mr. Mantri-CR on the points raised. We have also « gone through the letter from MSEDCL dated 3/2/2017 with respect to the implementation of the order passed by this Forum. The matters have already been disposed off. The orders were in

fact passed in terms of an order of the Hon'ble Ombudsman in Representation No.107/2016 as prayed by Mr. Mantri-CR himself. A copy of the Hon'ble Ombudsman's order was supplied by Mr. Mantri CR himself. He perhaps sought such orders under bonafide belief that MSEDCL will follow the directions and comply with the MERC orders in its right spirit at least when directed by the CGRF but in vain. Mr. Mantri CR therefore, seeks clarification. There is no review powers to this Forum but clarification may be issued in the welfare of the consumer.

2] We hereby clarify that MSEDCL has to comply with the order/direction in the order of Hon'ble MERC dated 15/6/2012 in Case No.43/2012 as pointed out by consumer in the complaint. They can recover only six installments. There is no approval from MERC for recovering seventh installment. A direction from Head Office is not equivalent to MERC approval. Thus MSEDCL is entitled to recover only six installments and shall have to refund the extra installment recovered.

3] So-far-as the interest is concerned, the same is not disallowed by this Forum. The Licensee to refund the additional FAC charged for more than six months with interest from the date of deposit of excess amount till the date of refund as per Section 62(2) of Indian Electricity Act, 2003.

Hence the order.

ORDER

1] With the above clarification the applications stand disposed off.

2] The MSEDCL should note that non-compliance of MERC order/directions would invite action Under Section 142 of Indian Electricity Act, as such report will be made to the Hon'ble MERC about non compliance if any for appropriate action against the concerned Official.”

(emphasis supplied)

Facts :

3. Respondent No.1 had raised a dispute against the petitioner before the CGRF in regard to the recovery of the “Fuel Adjustment Cost: (FAC). It appears to be not in dispute that the petitioner being a licensee under the 2003 Act was permitted to recover such cost by the Maharashtra Electricity Regularity Commission (for short ‘MERC’). The

issue as raised before the CGRF by the respondents in the original proceedings, was whether the petitioner would be entitled to recover anything more than six installments inasmuch as there were seven installments which were raised by the petitioner. On such plea of the respondents, an order dated 11 January 2017 came to be passed by the CGRF whereby the petitioners were directed to verify the claim of the respondent-consumer as it was a *post facto* approval which was given by the Maharashtra Electricity Regulatory Commission, to refund / adjust the amounts. It was ordered that such exercise be completed by the petitioner within one month from the date of receipt of the said order and compliance be reported within two months from the receipt of the said order. The case of the petitioner is that such directions of the CGRF as contained in the order dated 11 January 2017 were complied by the petitioner on 3 February 2017, and a communication to that effect be placed on record. It appears that, however, the proceedings were taken up by the CGRF on 8 March 2017. It is the petitioners' case that no notice that the proceedings would be taken up on such date, was issued to the petitioner, when the CGRF proceeded to pass the impugned order.

4. The petitioner has more than one grievance in regard to the impugned order. The first grievance is that no notice of listing/ hearing of the proceedings leading to the passing of the impugned order was

issued to the petitioner. The second grievance is that in the impugned order, Mr.Vijayanand S. Kale, Executive Engineer, was recorded to be present on behalf of the petitioner, who was never present, as he was transferred to Aurangabad by an order of the Petitioner dated 31 December 2016 which is annexed to the petition at 'Exhibit M', which recorded that: *'In pursuance of Corporate Office Order No. HR/ T/ E/ Deputation/ VSK/ 34907 dtd 23.11.2016, Shri.Vijayanand Sampatrao Kale, Executive Engineer (Distribution) (CPF No.2147491) working in Kalyan Circle – I is hereby relieved from his duties on today i.e. 31.12.2016 A.N., so as to enable him to report at Meda Div. Office, Aurangabad on deputation.'* Thus, Mr. Kale being relieved, the Petitioner has contended that there was no question of Mr.Kale remaining present at any hearing when the impugned order was passed. The third grievance is in regard to the nature of the directions as contained in the impugned order, which the petitioner contends amounts to the CGRF, exercising a review jurisdiction in reviewing its order dated 11 January 2017. This inasmuch as, there were no fresh proceedings before the CGRF. It is contended that the CGRF was conscious of the fact that there was no jurisdiction and authority with the CGRF to review its order, hence, in the impugned order, the CGRF had categorically observed that there are no review powers available to the CGRF, however, a clarification was sought to be issued in the welfare of the consumer. His contention is that the nature of such order is

nothing but the review of the earlier order dated 11 January 2017 passed by the CGRF. The fourth grievance of the petitioner is that in passing such order, the CGRF has completely given a go by to the clarificatory order issued by the MERC dated 28 July 2014 wherein the MERC had granted approval in regard to the FAC for the month of January, February and March, 2013. It is the petitioner's contention that if such approval was to be taken into consideration, the impugned order could not have been passed.

5. The respondents are served. Office record also shows that the respondents are served. The respondents are not only served by a private service, but also by Court notice. However, they have chosen not to appear in the present proceeding. Hence, there is no alternative but to proceed to adjudicate the present proceeding.

6. Having heard learned Counsel for the petitioner and having perused the record and the impugned order, in my opinion, there is much substance in the contentions as urged on behalf of the petitioner. In my opinion, the impugned order deserves to be set aside on the ground that the impugned order is less of a clarification and in fact, a review of original order dated 11 January 2017 passed by the CGRF. Admittedly, as observed in paragraph (1) of the order, the CGRF was

well aware of its limitations that it had no powers to review its orders. It is a well settled principle of law that unless the power of review is expressly conferred by the Statute, a quasi judicial authority cannot review its own order. Further, once an order has become final, it cannot be reviewed by the authority passing such order unless the law specifically confers a power to review the order. (See: **Dr.Smt.Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P) & Ors.**¹; **H.C.Suman & Anr. Vs. Rehabilitation Ministry Employees Co-operative House Building Society Ltd.New Delhi & Ors.**²) In the absence of any substantive provision under the 2003 Act conferring a power and authority with the CGRF to review its orders, the orders passed by the CGRF could not be reviewed by the CGRF, either explicitly or in an implicit manner, much less in the garb of a clarification. For convenience, it is appropriate to refer to such observations as made by the CGRF in the impugned order:-

1] Heard Mr. Mantri-CR on the points raised. We have also gone through the letter from MSEDCL dated 3/2/2017 with respect to the implementation of the order passed by this Forum. The matters have already been disposed off. The orders were in fact passed in terms of an order of the Hon'ble Ombudsman in Representation No.107/2016 as prayed by Mr. Mantri-CR himself. A copy of the Hon'be Ombudsman's order was supplied by Mr. Mantri CR himself. He perhaps sought such orders under bonafide belief that MSEDCL will follow the directions and comply with the MERC orders in its right spirit at least when directed by thee, CGRF but in vain. Mr. Mantri CR therefore, seeks clarification. There is no review powers to this Forum but clarification may be issued in the welfare of the consumer."

1 AIR 1987 SC 2186

2 AIR 1991 SC 2160

It is thus clear that when the principal proceedings were disposed of and there being no fresh proceedings, it was certainly not permissible for the CGRF to pass an order under the garb of clarification which itself reviewing its earlier order.

7. This apart, it appears to be not in dispute that the representative of the petitioner Mr.Kale was not present as he had assumed a new charge at his transferred posting. Also there was no notice of the proceedings issued to the petitioner. In the absence of the petitioner, such drastic order could not have been passed by the CGRF.

8. Apart from what has been observed above, as correctly urged on behalf of the petitioners that in passing the impugned order, the CGRF has not taken into consideration the subsequent order dated 28 July 2014 passed by the MERC, whereby an approval was granted to the petitioner as a licensee under the 2003 Act, to make a demand in regard to FAC amount for January, February and March, 2013. If a notice was to be issued to the petitioner to remain present and be represented, then the correct factual position in such context could have been pointed out to the CGRF. In such event, the impugned order could never have been passed by the CGRF.

9. The facts of the present case clearly demonstrate that the CGRF was hasty in passing the impugned order. The authority like CGRF although is required to act in consumer interest, however at the same time, it is necessary for the CGRF to bear in mind the interest of the licensees who are required to act under the 2003 Act as also the orders passed thereunder by the Electricity Regulatory Commission and the other appropriate authorities. It would be fatal for the CGRF to pass any orders in the absence of the licensee being represented before it and an appropriate clarification in regard to not only the legal aspects but also on the factual aspects is placed for its consideration by the licensee. On such backdrop, after hearing the parties, an order in accordance with law is required to be passed by the CGRF. Thus, any procedural regularity in passing orders by the CGRF ought not to lead to an unwarranted consequence of litigation being generated, as in the present case. Such situations, necessarily are required to be avoided by bodies like CGRF, whose duty under the Act is to redress the grievance of the consumer and in accordance with the guidelines as may be prescribed by the State Commission as Section 42(5) of the 2003 Act would mandate.

10. In the above circumstances, the impugned order looked from any angle cannot be sustained. It is required to be set aside. The petition is

accordingly allowed in terms of prayer clause (a) which reads thus:-

“a. that this Hon’ble Court be pleased to issue a writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction calling for the papers and proceedings leading to the passing of the Impugned Order dated 08.03.2017 by the Ld. CGRF and after going into the legality, validity and propriety thereof, to quash and/or set aside the same;”

11. Disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]