



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

WRIT PETITION NO. 805 OF 2020

Shri. Kamalkishor Gurudas Jaiswal,
Aged Major, Occu- Business,
R/o. Ganesh Vihar, Swapnapurti
Nagar, Near Suraj Nagar, Yavatmal.

.... **PETITIONER.**

// VERSUS //

Maharashtra State Electricity
Distribution Company Ltd.,
(MSEDCL), through its
Executive Engineer, Yavatmal.

.... **RESPONDENT.**

Shri P.R.Puri, Advocate for Petitioner.
Shri S.V.Purohit, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 10, 2023

ORAL JUDGMENT :

1. Heard.

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

3. The petitioner herein applied for new electric supply infrastructure for his layout, to the respondent which was allotted under

Dedicated Distribution Facility (DDF) and thereby the respondent supplied the electricity to the petitioner's layout.

4. According to the petitioner, as the electric line was supplied as Non-DDF category and not under the DDF Category, the petitioner approached to the Consumer Grievance Redressal Forum (CGRF) for refund of the amount spent by the petitioner on infrastructure supply.

5. The dispute was dismissed by the CGRF vide order dated 22/04/2019 holding that the petitioner is not a 'Consumer'. The said order has been upheld by the Ombudsman vide impugned order dated 29/07/2019. Hence, this petition.

6. Shri Puri, learned counsel for the petitioner makes following submissions :

- A) The definition of word "Consumer" cannot be restricted in the manner to deny the rights of a person who has been given supply of electricity.
- B) In similar matters this Court has already granted relief as prayed by the petitioner in this petition and thus, the case of the petitioner is covered by the judgments of this Court in the case of *Maharashtra State Electricity Distribution*

Company Limited (MSEDCL), Nagpur ..vs.. M/s. Darpan Multi Polypack (India) Private Limited, Nagpur and another, in **Writ Petition No.468 of 2018** and in the case of *Maharashtra State Electricity Distribution Company Limited, Wardha ..vs.. Mohan Pundlikrao Manmode*, reported in **AIR ONLINE 2019 BOM 3238**.

7. On the other hand Shri Purohit, learned counsel for the respondent has made following submissions:

- I) To apply the definition of Consumer the prerequisite is that electricity is supplied for person's own use by licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act of 2003. It is submitted that as the electricity in this case has not been supplied for personal use of the petitioner but it was supplied for the layout of the petitioner, the petitioner is not a consumer.
- II) The petitioner is not entitled for recovery of expenses incurred by the petitioner towards infrastructure.
- III) The complaint before the Consumer Forum was barred by limitation.

8. The whole controversy in the case at hand, revolves around whether the petitioner is a “Consumer” and whether she is entitled to get the amount refund back, which she has spent for getting the electric supply under the Non-DDF supply?

9. In the distribution system DDF means a separate distribution feeder or line emanating from a transformer or a sub-station or a switching station laid exclusively for giving supply to a consumer or a group of consumers. The transformer or the sub-station can also form a part of DDF if it is provided exclusively for giving supply to the consumers or no other consumer is fed from the said transformer / sub-station. The DDF cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer if the consumer does not seek DDF and in that case the licensee has to develop its own infrastructure to give electric supply.

10. In the present matter, the letter dated 06/08/2015, issued by Superintending Engineer of the respondent company, depicts that the supply was provided to the petitioner’s layout under DDF. The relevant part of the said letter reads thus :

“With reference to above Estimate for Electrification of new Residential layout Sy.no. 87/1, 87/2, 87/3 & 87/4 Chitamani Vihar in R/o. Kamalkishor Gurudas Jaiswal

at. Mouza, Lohara, Tal + Dist. Yavatmal approved/ technically Sanctioned for Rs.24,79,410=00 (Rs.Twenty four Lakh seventy nine Thousands four Hundred & Ten Only) vide estimate No.SE/YTL/ TECH/ D.D.F / 2015-2016/No.023 Dt.04.08.2015 as per delegation of powers w.e.f. 1/08/2006, Section-II (Works) Sr.No.1(E)-(V) as per letter No.CGM (F&A)/ MAHAVITARAN /1604, Dt.04/08/2006. And as per circular no. 25680 dated 19.06.2008.”

11. From the above referred document, it is evident that the respondent agreed to provide supply under DDF.

12. The record further shows that the respondent carried out the work of electrification at the petitioner's layout through a private contractor and supplied electricity from 11 KV Line to the petitioner which is under Non-DDF category as the line was taken by tapping the electricity line from nearby 11 KV Line and not directly from the sub-station to the petitioner's site.

13. The respondent does not dispute the above referred fact. Hence, I have no hesitation to hold that the supply given to the petitioner was from Non-DDF Category.

14. This Court in a judgment in the case of *Maharashtra State Electricity Distribution Company ..vs.. Mohan Pundlikrao Manmode*, reported in **AIR OnLine 2019 Bom.3238**, has held thus :

“5. I have heard the learned counsel for the parties and I have perused the documents on record. It is not in dispute that pursuant to the request made by the respondent no.1, he was provided with an estimate for electrification of the layout in question. The amount of Rs.14,36,724/- was directed to be deposited towards those expenses. While according to the respondent no.1 there was no Dedicated Distribution Facility provided to the said layout, it is the case of the petitioner that such facility was infact provided. Under Clause 2(g) of the said Regulations, Dedicated Distribution Facility means a facility which forms part of the distribution system of the licensee which is clearly and solely dedicated to supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises. This provision was the subject matter of interpretation by the Maharashtra Electricity Regulatory Commission and it was observed that a mere extension or tapping of the existing low tension or high tension line could not be treated as Dedicated Distribution Facility.

The Dedicated Distribution Facility would mean a separate distribution feeder or line emanating from a transformer or a sub-station or a switching station that has been laid exclusively for giving supply to a consumer or a group of consumers. It has been further observed that if a consumer does not seek Dedicate Distribution Facility, the licensee has to develop its own infrastructure to give such electricity supply. In the present case, there is no material to indicate that such Dedicated Distribution Facility was provided to the respondent no.1. On the contrary, it is seen that there was a tapping of line from the existing 11KW Borgaon Feeder which in turn was receiving supply from 33KW Borgaon sub-station. This aspect is substantiated by the sketch prepared by the Assistant Engineer of the petitioner itself.

6. It is thus found that the Forum was justified in relying upon the observations made in M/s Darpan Multi Polypack (India) Private Limited, Nagpur & Another

(supra). Moreover, in the light of the decision of the Hon'ble Supreme Court in *Chandu Khamaru Versus Nayan Malik & Others* [Civil Appeal No.7572 of 2011 (Arising out of S.L.P. (C) No.15332 of 2008)], (AIR 2011 SC 2897), it was the responsibility of the distribution licensee to make necessary arrangements to develop its own infrastructure to give electric supply in terms of Section 43 of the Electricity Act, 2003. The conclusion recorded by the Grievance Cell does not deserve to be interfered with. In that view of the matter, the challenge to the impugned order fails. The Writ Petition is thus dismissed with no order as to costs."

15. Similarly, the this Court in **Writ Petition No.468 of 2018** (*Maharashtra State Electricity Distribution Company Limited (MSEDCL) ..vs.. M/s.Darpan Multi Polypack (India) Private Limited, Nagpur & anr.*) vide order dated 20/03/2019 has held thus:

"11. The aforesaid specific statement made on behalf of the petitioner in the said portion of its submission makes it clear that the connection provided to respondent no.1 was a line tapping from the existing feeder to the point of supply at the premises of respondent no.1. Once this factual aspect stood established, it could not be said that the claim raised on behalf of respondent no.1 was without any merit. In review, respondent no.2 has paid attention to this aspect of the matter and it has been correctly found that DDF was not provided to respondent no.1 in the present case. Therefore, it cannot be said that any error has been committed by respondent no.2 while passing the impugned order directing refund of amount to respondent no.1 along with interest."

16. From the above referred observations, it is evident that it is the responsibility of the distribution licensee to make necessary arrangement to develop its own infrastructure to give electric supply in terms of Section 13 of the Electricity Act, 2003 and where the supply is not provided under DDF, refund of amount claimed by the petitioner is just and proper.

17. In the above referred backdrop, I find substance in the submission of the learned counsel for the petitioner that, the petitioner is entitled for refund of amount spent by her on getting the electric supply and therefore, the submission of the learned counsel for the respondent that the petitioner is not entitled for refund of the amount is hereby rejected.

18. Moving further, the Ombudsman rejected the representation made by the petitioner on the ground that it was barred by limitation. This Court, at Principal Seat in a judgment dated 10/02/2020 passed in Writ Petition No.8712 of 2018 has held that, the limitation of two years provided under Regulation No.6.6 of the Regulations would start running from the date of order or communication issued by Internal Grievance Redressal Cell (IGRC).

Thus, in the present matter, I do not find any merit in the submission of the learned counsel for the respondent that there was a delay in filing complaint before the CGRF.

19. Now, I am moving further to consider the submissions made by the respondent that the petitioner is not a Consumer. For this purpose, before referring and considering the definition of word “Consumer” given under Section 2(15) of the Act of 2003, it is necessary to reiterate the law relating to interpretation of the definition clause.

20. The Hon’ble Supreme Court of India in the case of *V.F. & G. Insurance Co. vs.. M/s. Fraser & Ross*, reported in **AIR 1960 SC 971** has held thus :

“6. ... It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition

clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. ...”

21. The Hon’ble Supreme Court of India in the case of *Mukesh K. Tripathi ..vs.. Senior Divisional Manager, LIC*, reported in **(2004) 8 SCC 387**, has held thus:

*“40. In Ramesh Mehta v. Sanwal Chand Singhvi it was noticed : (SCC p.426, paras 27-28)
"27. A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned.”*

22. From the above referred authoritative pronouncements, it is evident that a definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realizing that the function of a definition is to give precision and certainty to a word or phrase, but not to contradict it or supplant it altogether.

23. It is further clear that, the definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned. It may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why, all definitions in statutes generally begin with the qualifying words, unless there is anything repugnant in the subject or context. In view of this qualification, the Court has to not only look at the words but also to look at the context, the collocation and object of such words relating to such matter and interpret the meaning intended to be conveyed by the words used under the circumstances.

24. In light of the above referred interpretation of definition clause, I proceed to consider the definition of word “Consumer”, which reads thus:

“2. Definitions.

In this Act unless the context otherwise requires,-

(15) “**Consumer**”, means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the

business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;”

25. The definition clause starts with expression, “*unless the context otherwise requires .”*

26. In the definition of word “Consumer”, word ‘supplied’ has been employed in relation to supply of electricity and therefore, to determine whether the defined meaning can be applied to the word ‘Consumer’ in the context of the object and other provisions of the Act of 2003, it would be beneficial to the referred to definition of the word ‘supply’ given under Section 2(70) of the Act of 2003, which reads thus :

“(70) “supply”, in relation to electricity, means the sale of electricity to a licensee or consumer;”

27. It is thus, evident that wherever there is supply of electricity by the respondent under the Electricity Act, 2003, it would be the sale of electricity either to the licensee or to the consumer.

28. Thus, in light of the definition of word ‘supply’, the defined meaning of ‘Consumer’ cannot be applied in this case.

29. Furthermore, one of the objects of the Act of 2003 is to protect the interest of consumers. In light of the object of the Act if the defined meaning is given to the word ‘consumer’ it will lead to manifestly unreasonable and absurd consequences.

30. Similarly, the Regulation 2(g) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions of Supply) Regulations, 2005 (hereinafter referred to as “Supply Code”) which relates to Dedicated Distribution Facilities, says that such facility may be provided to a single consumer or a group of consumers.

31. Hence, there is no doubt that as per Regulation 2(g) of the Supply Code, the DDF can only be provided to the consumer.

32. Moreover, nothing has been pointed out that there is any provision which permits supply of electricity under Non-DDF Category to anyone other than the consumer.

33. In the circumstances, the restricted and narrow meaning cannot be applied to the definition of the word ‘consumer’ by holding that only in case of supply of electricity for personal use, a person to whom it is supplied is a consumer.

34. Accordingly, I have no hesitation to hold that the findings recorded by the Consumer Forum and the Ombudsman that the petitioner is not consumer are erroneous.

35. However, as far as Non-DDF is concerned, nothing is pointed out that the said facility can be provided to a person who is not a consumer.

36. Accordingly, I pass the following order :

- i) The petition is allowed.
- ii) The impugned order dated 22/04/2019 passed by CGRF, Amravati and the impugned order dated 29/07/2019 passed by the Electricity Ombudsman are hereby quashed and set aside and thereby the application of the petitioner to get the amount refund back spent by the petitioner towards infrastructure for supply of electricity to the petitioner's layout under the Non-DDF Category is allowed.

Rule is made absolute accordingly. No order as to costs.

At this stage, the learned counsel for the respondent prays to keep the judgment in abeyance for eight weeks.

The learned counsel for the petitioner makes a statement that he will not take any coercive action in eight weeks.

In that view of the matter, there is no need to grant any relief as prayed for.

(ANIL S. KILOR, J)

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