



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

Writ Petition No.216 of 2020

- 1) M/s Laxmi Govind Paper & Pulp Mills Ltd., through its Managing Director, 25, Ameya Tower, Near Dinanath High School, Dhantoli, Nagpur-440 012. email : 19.paper@yahoo.in Ph 9370143543

.... Petitioner(s)

// VERSUS //

- 1) The Superintending Engineer, Nagpur Rural Circle, Maharashtra Electricity Distribution Company Ltd., Vidyut Bhavan, Katol Road, Nagpur – 440 013.
- 2) ~~The Electricity Ombudsman, Nagpur – 440 013.~~
- 3) ~~The Consumer Grievance Redressal Forum, through its President, having Office at Prakash Bhavan, Link Road, Sadar, Nagpur.~~

(Deleted R-2 & R-3
as per order passed
on 20.01.2020)

... Respondent(s)

Shri T.D. Mandlekar, Advocate for the Petitioner/s
Shri S.V. Purohit, Advocate for the respondent-sole

CORAM : ANIL S. KILOR, J.
DATED : 10.10.2023

ORAL JUDGMENT :

1. Heard.

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

3. In the present matter, it is the case of the petitioner that though the continuous supply was never demanded by the petitioner, it was granted to the petitioner, accordingly, the tariff for the continuous supply was recovered from the petitioner instead of tariff of non-continuous supply. It is contended that for two reasons the respondent cannot charge tariff of the continuous supply; firstly as the petitioner never demanded such continuous supply; and secondly, the supply was not provided by express. Therefore, by making the application on 23.03.2018 to the Superintending Engineer a request was made for refund of difference of amount of the tariff from 2008 till 2016.

4. The petitioner, thereafter, raised his grievance before the Internal Grievances Redressal Forum (IGRF). The said complaint No. 69/2018-19 came to be rejected on the ground that though the numerous opportunities were given to the petitioner, the petitioner did not attend the matter and argued the same.

5. Thereafter, the petitioner approached to the Maharashtra State Electricity Distribution Co. Ltd.'s Consumer Grievances Redressal Forum, Nagpur Zone, Nagpur (CGRF) by filing the case CGRF(NZ)/21/2018, which was dismissed on the ground of limitation and the said order was upheld by the Ombudsmen vide order dated 23.09.2019, which is the subject matter of challenge in the present writ petition.

6. Thus, the whole controversy revolves around the question, whether the petitioner approaches the Consumer Grievance Redressal Forum within limitation ?

7. Admittedly, the petitioner was provided supply from the year 2004 and till 01.05.2007 there was no categorization in tariff namely, continuous supply and non continuous supply. However, from 2007 there was change in the tariffs of both the supply, namely continuous supply and non continuous supply and it was continued up to 2016 and again in 2016 the said categorization was done away with. Thus, the period for which the petitioner is claiming difference is from 2008 to 2016.

8. The learned counsel for the petitioner while making his point that, the complaint filed by the petitioner was within limitation, has argued that since charging of wrong tariff and recovering the same from the petitioner is a continuous wrong and therefore, the complaint is well within limitation.

9. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme court of India, in the case of *Balkrishna Savalram Pujari Waghmare and others Vs. Shree Dhyaneshwar Maharaj Sansthan and others*¹ wherein the Hon'ble Supreme Court of India, has held thus:

“31. It is then contended by Mr Rege that the suits cannot be held to be barred under art. 120 because Section 23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong under Section 23 ? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants ? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the

1 AIR 1959 SC 798

act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued. Can it be said that, after the appellants were evicted from the temple in execution of the said decree, the continuance of their dispossession was due to a recurring act of tort committed by the trustees from moment to moment ? As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of 23 in such a case. That is the view which the High Court has taken and we see no reason to differ from it."

10. In the above referred judgment, the Hon'ble Supreme Court of India, has held that, the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. It is further held that, if the

wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. It is observed that, if a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong.

11. On the other hand, the learned counsel for the respondent points out that as per Regulation 6.6 of the Maharashtra Electricity Regulatory Commission Regulations 2006 (The Regulation-2006), a limitation is of two years for filing complaint before the CGRF.

12. Here the question is, whether for recovery of difference of amount which was paid by the petitioner in 2008 can be claimed by filing the proceedings in the year 2018 i.e. after 10 years or the difference of amount from 2008 till 2016 can be claimed by filing the complaint before the CGRF in 2018 ?

13. The Regulation 6.6 of the Regulation-2006 says that the forum shall not admit any grievance unless it is filed within two years from the date on which the cause of action has arisen.

Further Regulation 6.7(b) of the Regulation-2006 says that the Forum shall not enter a Grievance unless a consumer is aggrieved on account of his Grievance being not redressed by the IGR Cell within the period set out in these Regulations.

14. The judgment cited by the petitioner in the case of *Balkrishna Savalram Pujari Waghmare and others (supra)* is of no help to the petitioner for the reason that in the said judgment, it is categorically held that, if the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.

15. In the present matter, after every demand of tariff under the category of continuous supply, the amount was paid by the petitioner without raising grievance about it and thus, the wrongful act which caused an injury to the petitioner can be said to be complete after the payment was made against the monthly demand and therefore, it cannot be said that there was continuous wrong though the injury caused to the petitioner may be continuous one.

16. In that view of the matter, in this case, the respondent has done away with the difference of tariff of continuous supply and non continuous supply in November 2016 and the petitioner approached to the CGRF on 07.03.2019 i.e. beyond three years, I do not find any error committed by the CGRF and Ombudsman. Accordingly, the writ petition is **dismissed**.

Rule is discharged. No costs.

[ANIL S. KILOR, J.]