2024:BHC-AS:26875

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2717 OF 2019

M/S Asahi India Glass Ltd.
Through Authorised Officer, ...Petitioner

Versus

State Of Maharashtra
Through Secretary, And Anr. ...Respondents

Adv. Nilesh Wable & Bhavika Shinde i/b Umesh Mankapure for the Petitioner.
Adv. A. R. S. Baxi for Respondent No. 2.
Adv. Pl V. Nelson Rajan, AGP for the State.

Coram : Sharmila U. Deshmukh, J.
Date : July 3, 2024.

P. C. :

1. Heard.

2. By this Petition, challenge is to the order dated 4th September, 2017 passed by the Electricity Ombudsman (Mumbai) appointed under Section 42(6) of the Electricity Act, 2003 in Representation No. 72 of 2017.

3. The facts of the case are that a representation was filed on 10th July, 2017 under the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 against the order dated 21st June, 2017 passed by the Consumer Grievance Redressal Forum, MSEDCL, Konkan Zone which had dismissed the complaint of the Petitioner.

4. The case of the Petitioner was that, the Petitioner had erected 33 kV HT line from Kharepatan Sub station to Rajapur Sub Station at

Taluka Lanja in Ratnagiri, in the year 1995 at their own cost for the purpose of their Silica Processing Plant. The plant was subsequently closed and the electricity supply was permanently disconnected in January, 2015. The Petitioner had expended Rs. 16,34,827/- as Service Line Charges and had erected the transmission line at a cost of Rs. 92,86,957.70/-. By the representation, the Petitioner sought refund of Rs. 2,12,04,000/- according to the present value of the transmission line along with the interest at the rate of 18%. The representation came to be opposed by the Respondent MSEDCL by pointing out the various provisions in the agreement which was executed between the consumer and MSEDCL. After hearing the parties, the Electricity Ombudsman held in paragraph No. 8 and 9 as under :

> *"8. The Appellant, M/s. FGIL subsequently requested for change of name to M/s. AIGL which was approved by the MSEB on 28th February, 2005. Agreement was also entered on 27th April, 2005 between MSEB and M/s. AIGL. Agreement interalia provides that depreciation for material and equipment at 25% for the first year or part thereof and 1% each for subsequent month or part thereof and the decision of the Chief Engineer as to whether any material so recovered is serviceable or not would be final and binding. The Respondent has pointed out that even according to the agreement the value of the line is zero and nothing is payable.*
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> *9. The supply connection of the Appellant is made PD on 9th January, 2015. By letter dated 9th June, 2015 and 13th August, 2015, the Appellant requested the MSEDCL that while availing fresh HT line connection, they had spent towards the SLC charges and erection cost of 33 kV Line. The entire line is in working condition and therefore, the cost of*

line should be refunded to the Appellant. The Respondent MSEDCL by reply letter dated 9th September, 2015 rejected the request stating that cost of construction for 33 kV line is not refundable. Again by letter dated 30th June, 2016, the Appellant requested for the refund of Rs. 16,34,827/- towards SLC and Rs. 92,86,957.70 cost of erection of 33 kV line. Since the amount was not refunded, the Appellant filed grievance before the Internal Grievance Redressal Cell (IGRC). In the said grievance, it was stated that the Appellant had erected HT substation from Kharepatan to Rajapur and requested for the refund of the cost incurred by the Appellant. The grievance came to be rejected by the IGRC by its communication dated 16th March, 2017 as the Appellant had agreed to incur the cost. The Forum, in its order dated 21st June, 2017 while rejecting the complaint has also observed that agreements were entered into between the parties on 22nd March, 1995 and again on 27th July, 2005. There was no mention about the refund of cost of infrastructure in the agreement dated 22nd March, 1995 and as per the provisions of Section 49 of the Electricity Supply Act, 1948, the MSEB had the right to impose the conditions of supply. The Forum has also observed that in the correspondence made between the parties, while seeking the supply, there was no mention about refund of expenditure."

5. Learned counsel for the Petitioner would submit that in the year 1995, the Petitioner had started his production activity at Waked and had applied for sanction for communication of power passing through the Petitioner's property. He submits that Respondent No. 2 had sanctioned the power supply by letter dated 21st January, 1995. He submits that the entire expenses for setting up the transmission line was expended by the Petitioner and thereafter, when the production activity has stopped, it is an obligation of MSCDCL to refund the cost of erection of the transmission line.

6. *Per Contra*, learned counsel for the Respondent would submit that as per the agreement executed between the parties, there was provision for depreciation for the material and equipment and accordingly as per the agreement, value of the HT line is "zero" and thus, there is no question of any refund.

7. Considered the submissions and perused the record.

8. It is not disputed that the Petitioner has erected the transmission line at his own cost in the year 1995. It is also not disputed that the electricity connection was utilized by the Petitioners for their electricity supply till the production activity was shut down due to non availability of raw material. The terms and conditions for the supply of the HT line was contained in an agreement executed between the parties on 27th May, 2005. The relevant clause is clause 9 (a) and (B) (1) and (2) reads as under :

> *9(a) Subject to the provisions of clause all herein the period of supply shall be seven years from the date of commencement of supply as period of years, the chief Engineer may, on the application of the consumer for such extension made two months prior to the expiry of the said period, and in his absolute discretion grant such extension of supply if possible and if power is available. The extension of supply, if granted, shall be determinable by two months prior notice on either side.*
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> *(B) On the expiry of the agreement, the supplier would give to the consumer credit for all materials returned in*

serviceable condition less.

1) The actual erection and dismantling charges inclusive of 15% for supervision and.

2) depreciation for the materials and equipment at 25% for the first year or part thee of and 1% each subsequent month or part thereof the decision of the Chief Engineer as to whether any material so recovered is serviceable or not would be final and binding.

9. The terms and conditions for supply of electricity were contained in the agreement and the Electricity Ombudsman or the CGRF is not empowered to direct refund any amount in deviation of the terms and conditions entered into between the parties. The relevant clauses of the agreement quoted above, makes it sufficiently clear that upon the expiry of the agreement, the obligation of the supplier to give consumer credit is dependent on the amount which will remain after the depreciation of the material and equipment at 25% for the first year or part thereof and 1% each for subsequent month or part thereof. The Petitioner has accepted the term of the agreement and had executed the agreement and thereafter accepted the supply of the HT line. That being so, considering the specific contention of the Respondent No.2 that upon the implementation of the said clause of depreciation, there was no amount which was refundable cannot be faulted with. Nothing has been brought on record to demonstrate otherwise. The impugned order being in consonance with the contract which was entered into between the parties does not suffer from any infirmity.

10. The Petition being devoid of merits stands dismissed.

[Sharmila U. Deshmukh, J.]