



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1078 OF 1995

M/s. Gavane And Patil Pvt. Ltd.

... Petitioner.

Versus

The Superintending Engineer,

Maharashtra State Electricity Distributing Company ... Respondents.

Mr. Anilkumar Patil a/w Mr.Sachin M. Bhavar, Ms.Zeel Jain and Mr.Rahul Rote, Advocates for the Petitioners.

Mr. Kiran Gandhi i/by Little & Co., Advocate for Respondent Nos.1 and 2.

Mr. S.L. Babar, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : October 17, 2024

P. C. :

1. Rule was issued in the present Petition on 29th February, 1996.
2. By the present Petition, the challenge is to the order dated 15th December, 1994 passed by the State of Maharashtra through the Hon'ble Minister, Energy Department setting aside the order of the Electrical Inspector i.e. Respondent No.3 dated 29th April, 1993 directing the Petitioner to be considered as an LT Consumer of the 2nd Respondent Board from 2nd December, 1992.

3. The facts of the case are that in 1969, the Petitioner-company was established and the electricity connection was obtained from Miraj Electricity Supply Company Ltd. Subsequently, the Petitioner's previous High Tension Load (HTL) was changed to Low Tension Load (LTL). In the year 1987, the Miraj Electricity Supply Company Ltd. was taken over by the Respondent No.2-MSEB, now, "Maharashtra State Electricity Distributing Company Ltd. (MSEDCL)" and thereafter electricity was being supplied by the MSEB. Till 1987, the Petitioner was a low tension consumer and on 30th April, 1990, a new tariff was introduced for high tension consumer. On 21st March, 1991, there was a visit by the flying squad which checked the tension load and found the load at 193.5 HP i.e. high tension load and suggested to the Petitioner to change its tension load from low to high. On 8th April, 1992, an agreement came to be executed between the Petitioner and the Respondent No.2 to change the tension load of the Petitioner from low to high and the contract demand was increased to 80 KVA. In the month of May, 1992, the new tariff was introduced by the Respondent No.2. On 23th September, 1992, the Respondent No.2 with reference to the previous communication of 14th September, 1992 called upon the Petitioner to reduce or revise their contract demand and if the

same is not done the new tariff will be applicable from 30th November, 1992. On 7th November, 1992, the Petitioner addressed a communication to the Respondent No.2 seeking reduction or change from high tension to low tension as their consumption had never surpassed 30 KVA and in support thereof submitted their intake for the previous months.

4. As there was no response to the request of the petitioner, a dispute came to be filed before the Respondent No.2 under Section 24 of the Indian Electricity Act, 1910 praying that the load may be declared as low tension with effect from 30th November, 1992. The dispute came to be resisted by the Respondent-MSEDCL. Vide order dated 29th April, 1993, the Respondent No.3 allowed the dispute raised by the Petitioner and declared the Petitioner to be a low tension consumer from 30th November, 1992. As against this, the Respondent No.2 preferred an Appeal under Section 36(2) of the Indian Electricity Act, 1910 before the Respondent No.4. Vide the impugned order dated 15th December, 1994, the Appeal came to be allowed holding that the power at which the electricity was supplied is the deciding factor and as the Petitioner had obtained the supply at 11000 volts from the Board, the Petitioner is H.T. Consumer in terms of condition of supply. By the impugned order

the decision given by the Electrical Inspector dated 29th April, 1993 came to be overturned.

5. Heard Mr.Patil, learned counsel for the Petitioner and Mr.Gandhi, learned counsel for the Respondent Nos.1 and 2.

6. Mr.Patil has taken this Court through the Dispute which was filed by the Petitioner. He submits that by the order of the Electrical Inspector, the Electrical Inspector has rightly considered the Application which was filed on 7th November, 1992 which is at page 43 of the Petition seeking a conversion from high tension to low tension. He submits that the Electrical Inspector has considered the MSEDCL Circulars No.338 and 472 and has come to a finding that the said circulars do not indicate whether the same are in respect of maximum demand or connected load. He would further submit that the well reasoned finding of the Electrical Inspector has been overturned by the Respondent No.4 by taking into consideration the condition of supply. He would further submit that considering the Application made on 7th November, 1992, the said Application should have been adjudicated and as the same was not done the Dispute came to be filed under Section 24 of the Indian Electricity Act, 1910 for being declared as a low tension

consumer. He has taken to this Court in detail through the order of the Hon'ble Minister which has overturned the findings of the Electrical Inspector and submitted that the Hon'ble Minister has taken into consideration the pressure of supply as a deciding factor for treating the consumer as low tension or high tension consumer.

7. *Per contra*, Mr. Gandhi, learned counsel appearing for the Respondent Nos.1 and 2 would point out the condition of supply which was executed between the parties on 8th April, 1992 and in particular he points out condition No.14 which provides for the revision of tariff. He would further submit that as per Clause 10(a), the period of supply under the agreement is to be a minimum period of 7 years. He would further submit that the Electrical Inspector has misinterpreted the MSEDCL Circulars No.338 and 472. He submits that the Electrical Inspector has held that the Circulars do not indicate whether the same are in respect of connected load or maximum demand, whereas a perusal of these two circulars, which he has tendered across the bar, would show that the same refers to the maximum demand. He submits that from the departmental Circular No.472, it is clear that the low tension supply is permitted for the loads upto 50 KW only and consumers applying for load exceeding 50 KW should be given supply at high tension

only. He submits that the request vide communication dated 7th November, 1992 did not make any request for reduction in the connected load and only set out that the monthly maximum demand did not exceed 50 KV. He submits that the said communication was in response to the intimation by the MSEB dated 14th September, 1992 intimating the Petitioner of the proposed revision and in event they wished to reduce or revise the contract demand to inform the office. He submits that there was no request in the communication on 7th November, 1992 as far as the reduction in the contract demand and therefore there was no occasion for the dispute to be filed.

8. Considered the submissions and perused the record.

9. The agreement which was executed between the parties on 8th April, 1992 has not been disputed. As per the conditions of supply, the consumer was enjoined to pay the revised tariff about which there is no dispute. Learned counsel appearing for the Respondent-MSEDCL has also fairly conceded that though Clause 10(a) in the agreement provides for minimum period of 7 years, the consumer could have filed an Application seeking reduction in the connected load. The request made on 7th November, 1992 pursuant

to the revision which was proposed to HT tariff is also not disputed. Upon reading of the request dated 7th November, 1992, it is clear that the Petitioner had made this Application for conversion from high tension load to low tension load. It was clearly stated therein that they are ready and willing to make the necessary compliance in this regard and requested to grant the Application and treat them as an LT consumer with effect from 30th November, 1992. The submission of learned counsel appearing for the Respondent-MSEDCL that by this communication there was no request made by the Petitioner to reduce the connected load, cannot be a ground for non-adjudication of this Application. The Application makes it clear that they sought conversion from high tension consumer to low tension consumer with effect from 30th November, 1992. Particularly, considering that by the communication 23rd September, 1992, it was the Respondent-MSEDCL itself which called upon the Petitioner to intimate the Respondent in event, they wish to reduce or revise the contract demand. In event it was found that the Application did not in very clear terms seek a reduction or revision in this connected load, it was open for the Respondent-MSEDCL to seek a clear indication of the said fact. From the communication which is produced on record at page No.43, it appears that same

has been sent by the Managing Director of the Petitioner who obviously would not be conversant with the necessary terminology. Without any such clarification sought, the request dated 7th November, 1992 remained unadjudicated.

10. Consequently, the Application was made to the Electrical Inspector seeking the same relief which was sought by the communication dated 7th November, 1992 i.e. for treating the Petitioner as L.T. consumer with effect from 30th November, 1992 which was in consonance with the communication of the Respondent-MSEDCL dated 14th September, 1992 as the tariff was proposed to be discontinued after 30th November, 1992. Although it is sought to be contended that the interpretation by the Electrical Inspector of the MSEDCL Circulars Nos. 338 and 472 is erroneous inasmuch as two circulars make it clear that the same refers to the maximum demand and is very specific that the low tension supply should be permitted for loads upto 50 KV only and consumer applying for loads exceeding 50 KV should be given supply of high tension, the final order which has been passed by the Electrical Inspector is not demonstrated to suffer from any infirmity.

11. The Electrical Inspector has rightly considered the request of

the Applicant and though misinterpreted the circulars of the MSEDCL, the final conclusion can be supported as the request was rightly made on 7th November, 1992 for a direction to be treated as low tension consumer.

12. The impugned order of the Hon'ble Minister considers the conditions of the supply and especially condition No. 28 which deals with the pressure of supply for low tension supplies and has thereafter taken into consideration that considering the pressure of supply, the Petitioner is an HT consumer and he has to pay the bill at the rates applicable to high tension consumer. The finding of the Hon'ble Minister makes it evident that the core issue which was required to be decided as regards the conversion from the high tension to low tension and the willingness for the necessary compliance of the Petitioner has not been considered while passing the impugned order. Although assuming that as per the conditions of supply, the MSEDCL declares the pressure of supply to be provided to the Petitioner, what was required to be considered is whether after making the necessary compliance, the Petitioner can be treated as LT Consumer with effect from 30th November, 1992. The dispute was essentially in respect of declaration to that effect sought which has not been considered by the Hon'ble Minister. The

Hon'ble Minister has overturned the findings of the Electrical Inspector without noticing the core dispute which arose between the parties and the order is therefore clearly unsustainable.

13. Resultantly, the Petition stands allowed. The impugned order dated 15th December, 1994 is hereby quashed and set aside. The order of the Electrical Inspector dated 29th April, 1993 stands revived.

14. Rule is made absolute in the above terms. Writ Petition stands disposed of.

15. It is open for the Respondent-MSEDCL to take necessary consequential steps as per the order of the Electrical Inspector.

[Sharmila U. Deshmukh, J.]