

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13555 OF 2023

City Corporation Limited

....Petitioner

Versus

Maharashtra Electricity Regulatory Commission
and Anr.

....Respondents

Ms. Deepa Chawan a/w. Ms. Reshmarani Nathani, Ms. Ruchi Patil, Ms. Dipali Sheth a/w. Mr. Harsh Shah and Ms. Akanksha Kothari i/b Eternity Legal for the Petitioner.

Mr. Kiran Gandhi a/w. Mr. Aakash Kothari i/b Little & Co. for Respondent No.2.

CORAM : SHARMILA U. DESHMUKH, J.

DATED : 12th FEBRUARY, 2024.

P. C. :

1. By this petition the challenge is to the order dated 20th April 2023 passed by the Maharashtra Electricity Regulatory Commission dismissing Case No.198/2022 filed by the petitioner seeking reliefs *qua* the distribution franchise agreement dated 16th October 2010 and the subsequent renewals thereafter executed by the petitioner with the respondent-State Electricity Distribution Company Limited. By the impugned order the Maharashtra Electricity Regulatory Commission on the facts of the case held that the Commission does not find any violation of the orders of the Commission and as such does not get jurisdiction to adjudicate the present matter.

2. Ms. Chawan, learned counsel appearing for the petitioner would submit that after having held that the Commission does not have jurisdiction to adjudicate the present matter, the parties should have been relegated to adopt appropriate proceedings. However the Commission has gone one step forward and has directed the petitioner and the State Electricity Distribution Co. Ltd. to immediately decide upon entering into fresh agreement/continuation of the Distribution Franchise agreement or to stop existing arrangement immediately and to invoke the appropriate clause relating to post termination of the distribution franchise agreement. Ms. Chawan for the petitioner would submit that the Commission has failed to take into consideration its own tariff order which pegs the distribution loss to certain percentage and failed to notice that by the distribution agreement which was executed between petitioner and respondent the distribution loss has been pegged at a percentage which would make it impossible for the petitioner to implement the distribution franchise agreement. She submits that the same would give jurisdiction to the Commission under Section 60 and Section 142 of the Electricity Act which deals with market domination. She would further submit that by directing cesser of existing arrangement and invocation of the clause relating to the post termination of the distribution franchise agreement the fundamental rights of the petitioner under Article 14 and

Article 19(1) (g) of the Constitution of India have been infringed and as such the remedy which is available to the petitioner is to invoke the writ jurisdiction of this Court.

3. *Per contra*, learned counsel appearing for the respondent would submit that the petition which was filed before the Maharashtra Electricity Regulatory Commission did not invoke Section 60 of the Electricity Act and was in fact filed under Section 14 and Section 86 of Electricity Act. He would further submit that as such the Commission has rightly held that it does not have any jurisdiction to adjudicate the present matter as the same relates to a dispute between Distribution Company and the Franchisee. He would further submit that supplementary bills which have been raised have not been paid and there is a monetary loss which has been caused to the State Electricity Distribution Company.

4. Considered the submission and perused the record.

5. The Maharashtra Electricity Regulatory Commission has refused to exercise jurisdiction for the reason stated in the impugned order. While declining to exercise jurisdiction by way of clause (ii) certain directions have been given to the parties and it is contention of learned

counsel for the petitioner that as the Commission has held that it does not have the jurisdiction no further directions could have been executed.

6. The Electricity Act 2003 which is a complete Code in itself provides for a remedy of Appeal under Section 111 to the Appellate Tribunal which reads as under:

“Section 111. (Appeal to Appellate Tribunal):---(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section(1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section(1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

(5) The appeal filed before the Appellate Tribunal under subsection(1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.”

7. In view of alternate remedy which is available to the petitioner, I am not inclined under Article 227 to entertain the present petition. The issue as to whether the Commission would have the jurisdiction to decide the dispute as also the issue whether direction as has been given under clause (ii) of the impugned order could have been given by the Commission once it is held that it does not have the jurisdiction is an issue which can be considered by the Appellate Tribunal.

8. Having regard to the discussion above, the petition is disposed of with liberty to the petitioner to file appeal under Section 111

of the Act to the Appellate Tribunal. While deciding the issue of limitation the Appellate Tribunal may take into consideration the pendency of the present petition.

9. It is made clear that this Court has not gone into merits of the matter and considering the alternate remedy which is available to the parties liberty is granted to the petitioner to avail the alternate remedy. At this stage learned counsel appearing for the petitioner submits that within a period of three weeks from today appeal would be filed before the Appellate Tribunal.

10. Considering the gravity of the issue which is involved inasmuch as the petitioner has invested a substantial amount and is also supplier of electricity to end consumers, the Appellate Tribunal is directed to decide the appeal within a period of 6 weeks after the filing of the appeal. All rights and contentions of both the parties are expressly kept open.

11. It cannot be disputed that if clause (ii) of the impugned order is executed, the petitioner will face irreparable loss and in my view the interest of petitioner is required to be protected till the hearing and final

disposal of appeal by Appellate Tribunal.

12. Writ petition is disposed of in the above terms.

13. Till the hearing and final disposal of the appeal by the Appellate Tribunal Clause (ii) of the impugned order is stayed.

(SHARMILA U. DESHMUKH, J.)