Corrections in title clause carried out as per Hon'ble Court's order dated09.08.2024

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

WRIT PETITION NO.1389/2019

Ramsons Industries Ltd.
A Public Limited Company, Registered under the Companies Act, 1956, bearing Registration No. as 192025 and having its registered office at First floor, RAMSONS 46, Humpyard Road, Dhantoli, Nagpur Maharashtra, through its authorised Signatory Mr. Vasant Tumane .....**PETITIONER**

...V E R S U S...

1. The Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, through its Secretary, having its registered office at Plot No.12, Shrikrushna, Vijay Nagar, Chhaoni, Nagpur – 440 013.

2. The Maharashtra State Electricity Distribution Company Limited, through its Superintending Engineer Nagpur, Rural Circle, MSEDCL, Vidyut Bhawan, Katol Road, Nagpur. ...**RESPONDENTS**

AND
WRIT PETITION NO.1405/2019

Ramsons Castings Private Limited,
A Public Limited Company, Registered under the Companies Act, 1956, bearing Registration No. as 064308 and having its registered office at First floor, RAMSONS 46, Humpyard Road, Dhantoli, Nagpur Maharashtra, through its authorised Signatory Mr. Vasant Tumane .....**PETITIONER**

...V E R S U S...

1. The Electricity Ombudsman,
Maharashtra Electricity Regulatory
Commission, through its Secretary,
having its registered office at Plot No.12,
Shrikrushna, Vijay Nagar, Chhaoni,
Nagpur – 440 013.

2. The Maharashtra State Electricity
Distribution Company Limited,
through its Superintending
Engineer, Nagpur, Urban Circle,
MSEDCL, Prakash Bhawan, Nagpur ...**RESPONDENTS**

Mr. R. D. Bhuibhar, Advocate for petitioners.
Mr. S. V. Purohit, Advocate for respondents.

CORAM:- ANIL L. PANSARE, J.
DATED :- 03.08.2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with consent of learned counsel for the parties.

Heard Mr. R. D. Bhuibhar, learned counsel for petitioners and Mr. S. V. Purohit, learned counsel for respondents.

2. The question involved in both the petitions is identical. Hence, they are taken up for hearing and disposed of by this common judgment. For convenience, the facts of Writ Petition No. 1389/2019 are noted.

3. The petitioner – Industry is aggrieved by order dated 30.08.2018, which came to be reviewed on 05.12.2018, to the extent of deletion of word “Penalty”, in the operative part. In that sense, the main grievance of the petitioner is against the order dated 30.08.2018 passed by the respondent No.1.

4. The respondent No.1 has upheld the order passed by the Internal Grievances Redressal Forum, Nagpur (It ought to be “Internal Greivances Redressal Cell” as per Regulation of 2006, accordingly hereinafter referred to as the, “IGRC”).

5. The petitioner had approached IGRC against the notice dated 13.12.2017 issued by the Superintending Engineer, Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as the, “MSEDCL”). The Superintending Engineer had issued notice titled as “Notice to comply”, stating therein that the petitioner has, on more than three occasions, exceeded sanctioned contract demand of 7900 KVA. Having exceeded the sanctioned contract demand for more than three occasions, the Superintending Engineer called upon the petitioner to make an application to MSEDCL, Circle Nagpur for enhancement of the contract demand and to make payment of Rs.1,19,56,505/- within a period of 15 days. In doing so, the

Superintending Engineer has relied upon Regulation Nos. 4 and 6 of the Maharashtra Electricity Regulations Regulatory Commission Tariff Order, 2006. Thus, in a way, the Superintending Engineer has compelled the petitioner to file an application for enhancement of the contract demand and further to pay amount of Rs.1,19,56,505/-.

6. The petitioner approached the IGRC under Regulation 6.2 of Maharashtra Electricity Regulatory Commission Regulations, 2006. The IGRC, after taking cognizance of the grievance so made, has given an opportunity to both the sides. The IGRC noted that the petitioner is HT (High Tension) consumer of MSEDCL and had sanctioned contract demand of 7900 KVA. The IGRC then recorded submissions of the Superintending Engineer, who stated that the petitioner had exceeded the contract demand for more than three times in a calendar year and has thus breached the contract in terms of regulations 4 and 6 of Supply Code Regulation and provisions of the MERC Tariff order. The Superintending Engineer restated the contract demand to the highest recorded demand during the calendar year 2017, only due to breach of contract. The IGRC found merit in the submissions made by the Superintending Engineering and accordingly dismissed the grievance application.

7. Having heard both sides, the question that arises for consideration is whether MSEDCL is empowered to compel the consumer to enhance the contract demand on the ground that the consumer has exceeded the sanctioned contract demand on more than three occasions in a year.

8. There is no dispute that the consumer can exceed the contract demand on three occasions in a year. In such a circumstance, penalty is imposed upon the consumer which has been done in the present case as well. The issue is what action can be taken against the consumers if the contract demand is exceeded on more than three occasions.

9. The respondent No.1, as also the authorities below have placed reliance upon the tariff order then existing to compel the petitioner to file application for enhancement of the contract demand. The relevant portion in tariff order finds place under the head "Penalty for exceeding contract demand" which reads thus:

> *"Penalty for exceeding Contract Demand*
>
> *In case a consumer (availing Demand-based Tariff) exceeds his Contract Demand, he will be billed at the applicable Demand Charge rate for the Demand actually recorded, and also be charged an additional amount at the rate of 150% of the applicable Demand Charge (only for the Demand in excess of the Contract Demand).*

> *Under these circumstances, the consumer shall not be liable for any other action under Section 126 of the EA, 2003, since the penal additional Demand Charge provides for the penalty that the consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations."*

10. As could be seen, the tariff order provides that in case a consumer exceeds his contract demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations.

11. I have gone through the Supply Code Regulations; Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, which has been relied upon by both the sides, to only find that there is no provision of whatsoever nature that would enable MSEDCL to compel the consumer like the petitioner to apply for enhancement of contract demand and to pay the amount thereon, which runs in crores of rupees.

12. Mr. Purohit, learned counsel for MSEDCL made an attempt to justify the demand on the ground that the consumer like the petitioner, by reducing the sanctioned contract demand, are taking advantage of incentives load factor, which entitles the

consumer for a rebate of 0.75% of energy charges after the consumer has a load factor above 75% to 85%. This rebate advantage encouraged consumers to reduce the contract demand to enable them to reach the consumption up to 75% or above of the sanctioned load contract demand. The end result is, the consumers are at advantage even by paying penalty for exceeding contract demand. In the present case, Mr. Purohit, submits that the petitioner has, by way of rebate, got benefit of Rs.1,00,00,000/- approximately and suffered penalty of about Rs.25,00,000/- only. Thus, gained advantage of Rs.75,00,000/- (approximately)

13. This argument will only expose flaws in the policy adopted by the MSEDCL. However, it would not justify, in absence of any provision in support, compelling consumer to file application for enhancement of contract demand. It is the consumer who should be left to decide his requirement of the contract demand to run the factory. The MSEDCL cannot compel consumer to have a specific contract demand particularly in absence of any contract between the parties to that effect or any provision supporting such enhancement.

14. I am informed that the regulations are now put in place to deal with the aforesaid contingency. The MSEDCL has placed in

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effect, Mid Term Tariff, 2018 and Supply Code, 2020, that empowers the MSEDCL to compel the consumer to apply for enhanced contract demand.

15. Admittedly, at the relevant time the provisions to compel the consumer to apply for enhancement in contract demand were absent and, therefore, the authorities below could not have compelled the petitioner to make such an application.

16. Petitioner has, therefore, made out a case. The writ petitions are accordingly allowed. The impugned orders dated 30.08.2018 and 23.08.2018 passed by respondent No.1 in Representation Nos. 34/2018 and 35/2018 as also orders dated 05.12.2018 in Review Petition Nos. 78/2018 and 74/2018 passed by respondent No.1 are quashed and set aside. The consequences, including refund of the additional payment along with interest, if permissible, shall follow. The MSEDCL is at liberty to adjust this amount against the electricity, that will be consumed by the petitioner in due course.

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Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

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