

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10716 OF 2022

Maharashtra State Electricity Distribution
Company Ltd. and Ors. .. Petitioners

Versus

M/s. J.K. Files (India) Ltd. .. Respondent

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- Ms. A.R.S. Baxi, Advocate for Petitioners.
 - Ms. Shanaya Cyrus Irani a/w. Mr. Siddhesh S. Pradhan, Advocates
i./by J. Sagar Associates for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : JULY 04, 2025.

P.C.:

1. Heard Ms. Baxi, learned Advocate for Petitioners and Ms. Irani, learned Advocate for Respondent.

2. Present Writ Petition is filed by Maharashtra State Electricity Distribution Company Ltd. (for short "**MSEDCL**") challenging order dated 12.05.2022 passed by the Consumer Grievance Redressal Forum, Kolhapur Zone, Kolhapur (for short "**CGRF**") in Case No.12 of 2021 allowing the Grievance Application filed by Respondent - Company thereby, *inter alia*, (i) waiving off the demand penalty charges imposed on Respondent - Company for the period from May 2020 to August 2020 and (ii) directing refund of penalty and electricity duty charges recovered by MSEDCL from Respondent - Company with interest @ 5% per annum from the date of payment of penalty by Respondent -

Company.

3. Facts necessary for adjudication of the present Petition are as follows:-

3.1. Respondent - Company is a High Tension Consumer of the MSEDCL with normal contract demand of 1500 KVA per month. During the COVID - 19 pandemic period in March 2020, the MSEDCL made available to its High Tension Consumers online facility on its website <https://wss.mahadiscom.in/wss/wss> to change their contract demand up to three times in a billing cycle with auto approval.

3.2. Owing to the then restrictions imposed during the nation-wide COVID-19 lockdown and reduction in use of electricity, on 07.04.2020 Respondent - Company through the MSEDCL website on the 'Load Change / Demand' tab submitted Application bearing No.26211075 to reduce its contract demand from 1500 KVA to 188 KVA and upon acceptance of the said Application, the contract demand of Respondent - Company was reduced to 188 KVA w.e.f. 07.04.2020.

3.3. On 03.05.2020, as the 'Load Change / Demand' tab on the MSEDCL's website was non-responsive and hence Respondent - Company raised a service request on the same website to increase / reinstate its contract demand back to original i.e. 1500 KVA.

3.4. On 26.05.2020, MSEDCL addressed an e-mail to Respondent

- Company informing them about a practice direction for revision of contract demand in a billing cycle issued by Maharashtra Electricity Regulatory Commission (for short "**MERC**") on 21.05.2020 and providing the modalities for requesting revision of the contract demand.

3.5. On 10.06.2020, MSEDCL generated electricity bill of Respondent - Company for the month of May 2020 which reflected Respondent - Company's contract demand as 188 KVA despite its online service request for increasing the contract demand to 1500 KVA. Hence on 12.06.2020 Respondent - Company raised another service request on MSEDCL's website for increasing its contract demand to 1500 KVA. In addition thereto, Respondent - Company addressed e-mail dated 12.06.2020 to Respondent No.2 - MSEDCL's Circle Office referring the service request dated 03.05.2020 and requesting them to make the necessary changes in its records.

3.6. In the bills generated for Respondent - Company by MSEDCL for the months of July 2020, August 2020 and September 2020, MSEDCL charged penalty and excess duty for the period between May 2020 and July 2020 which amounted to Rs.22,61,591.84/-. The said charges were duly paid by Respondent - Company under protest.

3.7. On 10.08.2020 Respondent – Company could access the

'Load Change / Demand Request' tab on MSEDCL's website and submitted online Application for increase / reinstatement of its contract demand to 1500 KVA.

3.8. By letters dated 10.08.2020, 13.08.2020, 15.09.2020, 30.12.2020 and 04.03.2021 Respondent - Company sought waiver / refund of the excess demand charges and penalty charged by MSEDCL on the ground that the online service was dis-functional and it had taken immediate steps to register the service request. By Reply dated 22.02.2021, MSEDCL informed Respondent - Company that it failed to follow the established procedure as per the guidelines issued by them and informed to all its High Tension Consumers by e-mail dated 26.04.2020 and 27.04.2020 and hence its request for waiver / refund of the excess demand charges was rejected.

3.9. In the above backdrop, Respondent - Company approached the Internal Grievance Redressal Cell (for short "**IGRC**") constituted under the provisions of the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 and filed complaint dated 25.03.2021 which was dismissed by IGRC by order dated 15.04.2021.

3.10. Aggrieved by the order dated 15.04.2021, Respondent - Company filed Grievance Application before the CGRF. After considering the submission of both sides and the material on record,

the CGRF allowed the Grievance Application of Respondent - Company by order dated 12.05.2022.

3.11. Hence the present Petition by MSEDCL.

4. Ms. Baxi, learned Advocate for Petitioners – MSEDCL and others would submit that the special facility for 'Load Change / Demand Request' was made available to its High Tension consumers only during the COVID – 19 pandemic period. She would submit that during the pandemic period only 5% of its staff was working and hence the said online facility was made available. She would submit that perusal of the sample e-mail sent by MSEDCL to all its High Tension consumers appended at Exhibit – 'A' page No.17 of Petition would show that MSEDCL had already intimated all its High Tension consumers that the 'Load Change / Demand Request' with auto approval facility would be available only through the online web portal and applications by manual or any other mode would not be considered.

4.1. She would submit that it is not the case of Respondent - Company that they were unaware about the online web portal facility as they had initially applied through its web portal for reduction of their contract demand and hence they were well acquainted with the procedure for change / reduction / increase of contract demand which could be accessed online only through the web portal facility and not

otherwise.

4.2. She would submit that Respondent – Company has raised plea that the web portal facility was not working and only in August 2020 it could be accessed and not earlier than that. To negate the claim of Respondent – Company that the online portal was not working, she has drawn my attention to Exhibit ‘F’ page No.35 of the Petition which is a list prepared by MSEDCL of applications received for change / reduction in contract demand during the same period which according to Respondent – Company was inaccessible and not working. Hence she would submit that plea of Respondent – Company that as online portal facility was not working they raised the service request for the same which cannot be accepted by the Court.

4.3. She would submit that the CGRF has not considered the aforesaid facts and reversed the decision of IGRC which is contrary to the well settled legal position. She would submit that the auto approval facility for change / reduction / increase in contract demand being available only through the web portal, application for the same through any other mode cannot be considered and the additional charges billed to the Respondent – Company for the 3 month period were correct and proper. In view of her above submissions she would urge the Court to allow the Writ Petition and quash and set aside the impugned order dated 12.05.2022 passed by CGRF and confirm the

order dated 15.04.2021 passed by IGRC.

5. *PER CONTRA*, Ms. Irani, learned Advocate for Respondent – Company would submit that MSEDCL's case stems from the practice direction dated 21.05.2020 issued by MERC which were issued to assist consumers during COVID-19 pandemic and the same does not provide or specify any modality to be adopted by consumers to request changes in their contract demand. She would submit that as the same does not specify and is silent on the medium for application to request change in contract demand, MSEDCL cannot at a later stage claim that the application for change in contract demand was only to be made through the online web portal facility as the practice direction does not mention any such direction to be complied in a strict manner. She would submit that the same was facilitative in character and on its non-functioning alternate mode of application cannot be ruled out.

5.1. Next she would submit that the e-mail which the MSEDCL is claiming to have sent to all its High Tension consumers was never received by Respondent – Company and hence Respondent – Company was unaware about any such rule of MSEDCL that the said application for change in contract demand was compulsorily required to be made through the 'Load Change / Demand Request' on the web portal of MSEDCL. Therefore the request made by Respondent – Company through the web portal of MSEDCL owing to the 'Load

Change / Demand Request' tab being unresponsive needs to be considered as valid and hence the CGRF order has been correctly passed.

5.2. She has drawn my attention to page No.187 of the Affidavit-in-Reply filed by Respondent – Company which is an order dated 03.05.2021 passed by CGRF, Pune in Case No.01 of 2021 wherein the CGRF has recorded the issues with the auto approval system provided by MSEDCL in May 2020 which is the same time when the Respondent – Company also faced issues with the MSEDCL online portal.

5.3. She would submit that CGRF while passing order dated 12.05.2022 has considered all submissions and documents meticulously and it being a well reasoned order calls for no interference and deserves to be upheld and confirmed. Hence she would urge the Court to dismiss the Writ Petition.

6. I have heard the submissions made by the learned Advocates for the respective parties and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

7. In the present case it is seen that the principal grievance of Petitioners – MSEDCL is that the Grievance Application filed by Respondent ought not to have been allowed by CGRF as it did not submit its Application for change of load through the established

proper channel which was the 'Load Change / Demand Request' tab accessible through the web portal of MSEDCL. According to Respondent - Company, initially on 07.04.2020 when Respondent - Company wanted to reduce its contract demand from 1500 KVA to 188 KVA, it applied for reduction through the 'Load Change / Demand Request' tab on the web portal provided by MSEDCL and the same was auto-approved on the same day but since the 'Load Change / Demand Request' tab was non-responsive or not functional on the subsequent occasion i.e. on 03.05.2020 and also 12.06.2020, the Respondent – Company immediately raised service requests for change in the contract demand.

8. Perusal of record reveals that on 03.05.2020 when Respondent – Company raised its service request for increasing / reinstatement of the contract demand to 1500 KVA, the same was assigned by MSEDCL to its Jalalkheda sub-division office which admittedly did not have jurisdiction of the area where Respondent – Company was situated since Chiplun Rural sub-division office had jurisdiction over the said area. Be that as it may, once the service request was assigned to the sub-division office by MSEDCL, it was their duty to act upon the same and take appropriate steps. As the electricity bill for the month of June 2020 did not reflect the reinstated / increased contract demand, Respondent – Company again tried to access the 'Load Change / Demand Request' tab which once again was

non-functional on 11.06.2020 and therefore Respondent – Company raised another service request on 12.06.2020 mentioning the earlier service request dated 03.05.2020 with request to reinstate / increase their contract demand to 1500 KVA. It is seen that the second service request was assigned to the Chiplun Rural sub-division office.

9. It is seen that simultaneously on the same date when Respondent – Company's representative visited MSEDCL's office for inquiry, he was asked to address an e-mail to the Circle Office at Ratnagiri which was also complied with by Respondent – Company. However despite the twin service requests and the e-mail, Petitioners – MSEDCL did not act on the same and have charged penalty and excess duty charge in the electricity bills of Respondent – Company for the months of July 2020, August 2020 and September 2020. The said penalty / charges were paid by Respondent – Company under protest.

10. It is seen that thereafter there is a series of correspondence dated 10.08.2020, 13.08.2020, 15.09.2020, 30.12.2020 and 04.03.2021 addressed by Respondent – Company to Petitioners – MSEDCL intimating them about the issue faced by them with the 'Load Change / Demand Request' tab on their web portal, however the same were not replied to by MSEDCL except for reply dated 22.02.2021 rejecting their plea for refund of the penalty / excess duty charges as they did not apply through proper channel.

11. Next the MSEDCL has placed reliance on practice direction issued by MERC in its order dated 21.05.2020 passed in Case No.82 of 2020. That order is placed before me by Petitioners and is appended at page No.209 of their Rejoinder to Respondent – Company’s Affidavit-in-Reply. Perusal of the said order shows that the directions only require that the application for change in contract demand has to be made online through the website of MSEDCL and not through e-mail or manually. However that is not the case herein. The learned CGRF has correctly taken into account the facts and circumstances in the present case and passed order dated 12.05.2022 directing MSEDCL to refund the penalty / excess demand charges to Respondent – Company.

12. Learned Advocate for Respondent – Company has also drawn my attention to copy of order dated 03.05.2021 passed by CGRF, Pune in Case No.01 of 2021 which is appended at page No.187 of the Affidavit-in-Reply wherein CGRF has categorically recorded that the MSEDCL website for change / reduction in contract demand was facing some issues in May 2020. Hence it is clear that it is not just the Respondent – Company herein who faced with such issues but there were other consumers also who faced similar issues. Mere reliance on one or two consumers having access through the portal cannot *ipso facto* imply that the portal was functional. If that be the case, then there was no occasion for the Respondent to raise the twin service

requests and address the email to the Circle Officer after visiting the Petitioner's Office. The Respondent has acted *bonafidely* in the present case.

13. From the above it is clear that despite the Respondent – Company raising service request for change in load / contract demand through the online website of MSEDCL on the portal being inaccessible, it is MSEDCL who failed to act on the same and has further charged excess duty charges as well as penalty to Respondent – Company for 3 months. The learned CGRF has therefore rightly directed MSEDCL to waive off the excess duty charges and refund the excess duty charges as also penalty charges to Respondent – Company which in the opinion of this Court is a covert order passed by the CGRF.

14. The order dated 12.05.2022 passed by the CGRF in the present case considers all above mentioned facts and circumstances and is a well reasoned order which does not call for any interference of this Court. The order dated 12.05.2022 passed by the CGRF in Case No.12(2021) (Case ID No.2021060029) is therefore upheld and confirmed.

15. Resultantly, Writ Petition fails and is dismissed.

[MILIND N. JADHAV, J.]

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