IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6409/2024

Maharashtra State Electricity Distribution Company Ltd., Through its Executive Engineer (Adm.) O & M Circle, Civil Lines, Washim

... **PETITIONER**

...VERSUS...

M/s Meera Enterprise,
Through its Proprietor,
Hasmukh Patel,
Plot No.164 & 194, At IRLA,
Post- Kalambeshwar, Malegaon, Washim.

...**RESPONDENT**

Shri S.V. Purohit, Advocate for petitioner

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 09/01/2025
DATE OF PRONOUNCING THE JUDGMENT: 20/01/2025

JUDGMENT

. Heard learned Counsel for petitioner.

2. The Petitioner, by the instant Petition, is challenging the final order passed in CGRF case No. 120/2023 dated 05/04/2024,

whereby, the Consumer Grievance Redressal Forum, Akola (CGRF For Short) partly allowed the grievance in application of the respondent and directed the petitioner, to refund balance security deposit of old connection with interest, to revise the energy bills of consumer by assuming that its contract demand is 616 KVA, to refund electricity duty and to pay to the consumer subsidy given by the Government as per Government Notification.

3. The petitioner being a Distribution Licensee was initially supplying power through its High Tension lines to the respondent with contract demand 900 KVA as per its agreement with the respondent consumer. The electricity supply was provided since 20/06/2019 and was billed with consumer No. 326099026590. It is submitted that the respondent consumer in due course of time, though consumed the electricity but did not pay its bills and as a result of which, there were outstanding arrears. The respondent consumer requested the petitioner to permanently disconnect its supply by moving an application dated 10/03/2022. The consumer further requested MSEDCL to adjust its security deposit against its outstanding arrears. The petitioner processed the consumers

request as per supply code regulations by finalizing the bill and adjusting the arrears against the security deposit. Thus, the agreement between the petitioner and the consumer came to an end on or about 12/03/2022 and the respondent was no longer the consumer of the petitioner.

4. The respondent again applied to MSEDCL for getting a new connection on or about 03/07/2022 and in pursuance to the same, the respondent was given new connection with new consumer bearing no. 326099032850 and with contract demand of 500 KVA. The Respondent/Consumer though had contract demand for 500 KVA, but consumer exceeded the contract demand on more than three occasions, therefore, MSEDCL requested respondent No.1 to submit an application as per supply code regulations for increase of contract demand. The respondent vide application dated 27/09/2023, applied for revision of its contract demand from 500 KVA to 600 KVA. The petitioner conveyed the sanction for enhancement of contract demand on 08/12/2023. The petitioner after receiving the payment of the charges from the consumer as per estimate given, the enhancement was increased on

17/02/2024.

5. The Respondent consumer filed a complaint/grievance before the CGRF, Akola, praying for transfer of alleged credit balance of old security deposit [Consumer No. 326099026590] with interest in the New account [Consumer No. 32609932850] of the consumer. The consumer also made a grievance in the matter of granting exemption from levy of Electricity Duty and refund of the Same ETC. The member of the CGRF after hearing the parties have passed the impugned order dated 05/04/2024 directing the MSEDCL to comply the order within 30 days.

6. Learned Counsel for the petitioner contended that it is only the Government of Maharashtra which is empowered to grant any subsidy to any consumer and if there is any dispute in relation to the same, then it is Govternment of Maharashtra which can alone decide the same. The commission has no jurisdiction in such matters. The Electricity Duty Act is also relevant as the electricity duty is levied by the Government under the Maharashtra Electricity Duty Act, 2011. The electricity duty and if at all there is any

dispute, it is the State Government which can decide the dispute.

7. It is further contended that the CGRF has not considered the effect of the orders passed by MERC in Case No. 07/2023, 117/2023 and provisions of Maharashtra Electricity Duty Act, 2016. The said orders and the Act would show that the CGRF did not have any jurisdiction to deal with and decide any dispute in respect of grant of electricity duty exemption/subsidy. The impugned order is thus perverse and without jurisdiction which needs interference by this court and which needs to be set aside.

8. In spite of service to the sole respondent as per noting dated 09/12/2024, none appeared for respondent.

9. I have heard learned Counsel for the petitioner. Perused the impugned order. Considered relevant provisions of regulations issued time to time and Act. Main grievance of the petitioner is that the order passed by CGRF is without jurisdiction, specifically Clause 3, 4 and 5 of the directions, which reads as under:

> ***"3.*** *NA MSEDCL shall revise the energy bills of a*

> *consumer assuming contract demand as 616 KVA load from the month of Oct-2023 as per provision in clause 7.6 of Supply Code regulations 2021. NA MSEDCL is directed to refund the penalty recovered against excess demand charges with interest at a rate equivalent to the Bank Rate of the Reserve Bank of India.*
>
> ***4.*** *On account of ED exemption implemented from Jan-2024 NA MSEDCL is directed to refund the amount of electricity duty recovered before Jan-2024 with immediate effect.*
>
> ***5.*** *NA MSEDCL is directed to pay the state govt. subsidy (VM) to the applicant consumer @ 0.45 paise per unit for eligible period as per state govt. notification."*

10. By Clause 3 of the order, the petitioner was directed to revise the energy bills from the month of October 2023, assuming contract demand as 616 KVA. It was further directed to the petitioner to refund the penalty recovered against excess demand charges with interest at a rate equivalent to the Bank Rate of the Reserve Bank of India. Question before me is whether CGRF is having jurisdiction to issue such directions? Section 61 of the Electricity Act is relevant. Thus, on perusal of Section 61, it is the appropriate commission to decide the terms and conditions for the determination of tariff as per guidelines provided under Section 61 of the Electricity Act. The Consumer Grievance Redressal Forum is

established as per Section 42 Sub Clause 5. Under Section 181, there are powers of State Commission to make regulation is given. The Clause 7.6 of the Regulations, 2021, of the Maharashtra Electricity Regulatory Commission reads as under :

> ***7.6*** *The Distribution Licensee shall revise (increase or decrease) the Contract Demand/Sanctioned Loan of the Consumer upon receipt of an application for the same from the Consumer:*
>
> *Provided that in case Consumer exceeds its Contract Demand on Three (3) occasions in any Financial Year, then Distribution Licensee shall intimate such Consumer to apply for regularising its Contract Demand. In case Consumer refuses or fails to do so, Distribution Licensee shall revise its Contract Demand to the highest recorded Maximum Demand in that Financial year in the immediate next ensuing bill :*
>
> *Provided further that where such revision (increase or decrease) in Contract Demand/Sanctioned Load entails any works, the Distribution Licensee may recover expenses relating thereto in accordance with the principles specified in Regulation 4, based on the rates contained in the Schedule of Charges approved by the Commission under Regulation 19 :*
>
> *Provided further that any dispute with regard to the need for and extent of any such works pursuant to an application for revision (increase or decrease) in Contract Demand/Sanctioned Load shall be determined in accordance with the procedure set out in the Grievance Redressal Regulations."*

11. The Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman)

Regulations, 2020, define grievance under 2.1(e) and define forum under (f). Forum is established as per Sub Section 5 of Section 42 of the Act, and the grievance means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by distribution licensee in pursuance of license. As such, whether the CGRF have jurisdiction to pass the order complained of directing to petitioner to revise the energy bill of a consumer assuming contract demand as 616 KVA load from the month of October, 2023. It is admitted position that the respondent was consumer of the petitioner herein since 2019 to 2022 and there was contract demand of 900 KVA. The provision related to load factors incentives and penalty for exceeding contract demand in tariff order dated 03/11 /2016, in Case No. 48 of 2016 is relevant.

> ***8.32*** *In case the Billing Demand exceeds the Contract Demand in any particular month, the Load Factor Incentive will not be payable in that month. (The Billing Demand definition excludes the demand recorded during the non-peak hours, i.e. 22:00 hrs to 06:00 hrs. Even if the Maximum Demand exceeds the Contract Demand in the duration, the Load Factor incentive would be applicable. However, the consumer would have to pay the penal charges for exceeding the Contract*

Demand.)"

*"**6.8** The Distribution Licensee shall increase or reduce the contract demand/sanctioned load of the consumer upon receipt of an application for the same from the consumer"……………………………………………………*
The consumer is expected to generally operate within its own contract demand and not to exceed the contract demand as a matter of routine, while the distribution licensee is mandated to carry out the grid operations in a safe and secure manner. Therefore, a specific provision has been incorporated in case a consumer exceeds its contract demand on more than three occasions in a calendar year. Repeated drawal of power in excess of the contract demand exposes the grid to risks and hence, from the point of view of proper grid operations and planning, an enabling clause has been incorporated about revision in contract demand."

12. As there were arrears, respondent applied for discontinuance of the electricity supply and asked to adjust arrears from security deposit. The respondent thereafter applied for fresh connection with CD for 500 KVA. It appears that there was violation of contract demand for more than three times and therefore, show cause notice was served to respondent herein to apply on its own or MSEDCL who will revise MD as per regulation 7.6 of supply code 2021. Earlier respondent's contract demand was 500 KVA. He applied on 27/09/2023 to revise the contract to the petitioner herein to enhance it by 600 KVA. However, it is admitted fact that in

June, July, August and September, the supply was more than 500 KVA. It is contention of the respondent that the petitioner ought to have increase quantum of loan from October as there is no infra is required.

13. Learned Counsel for petitioner submitted that when earlier connection was discontinued and new connection is provided, respondent has become new consumer and new number is provided. As such, there are two different issues of two different individual consumers represented in single grievance. Therefore, application was not tenable. The Commission in its subsequent MTR order dated 12/09/2018, decided that "in case the consumer exceeds its Contract Demand (including during the non-peak hours i.e., 22:00 hrs to 06:00) in any particular month, the Load Factor Incentive will not be payable to the consumer in that month".

14. Even for enhancement of demand contract, the amount required to be deposited and after such deposit, the petitioner corporation undertake the upgradation and all necessary steps for such connection for enhancement. It is pointed out that there is no

any limitation is prescribed to carry out the connection within stipulated period and failure to which, pay the compensation, whereas, there is stipulation of three months when the demand contract is to be reduced and over a period of three months the applicant is entitled for compensation. Thus, when amount is deposited after estimate is given on 08/12/2023 and connection is given on 17/01/2024, there is no question of directing petitioner to revise the energy bill from the month of October 2023. The penalty is for the excess use of electricity over and above the demand contract and it is as per Rules. The learned Forum is totally erred in directing for revision of energy bills and directing refund the penalty and to pay compensation. Consumer Forum/CGRF has no jurisdiction to pass such orders.

15. So far as Subsidy aspect is concerned, I have perused the order in Case No. 7/2023, produced on page No.48, in Clause 22.4, it is specifically held that subsidy has been declared by the Government of Maharashtra under Section 65 of the Electricity Act, 2003. Therefore, Government of Maharashtra is empowered to grant any subsidy to any consumer category and any dispute related

to such direct subsidy needs to be referred to the Government of Maharashtra. It is upon the Government of Maharashtra to clarify any aspect of applicability of subsidy, if there is doubt from the intended beneficiary or implementing agency. The CGRF has no jurisdiction to pass any order in respect of subsidy.

16. As per Clause 4 of the order, CGRF directed to refund the amount of electricity duty before January 24^{th} on account of ED exemption implemented from January 2024. Exemption in electricity duty is totally within the domain of Government. Therefore, whatever electricity duty is recovered before January 2024, cannot be directed to be refunded by the CGRF, unless there is specific direction by the State Government. In view of these directions given under Clause 3, 4 and 5 by the CGRF are beyond jurisdiction and liable to be set aside. Though the amount was deposited without prejudice of petitioner's right as it is specifically mentioned in paragraph No. 10 of the petition that petitioner has complied with the order of CGRF without prejudice to it's right to challenge it before the higher forum. Thus petitioner is free to take appropriate steps to that effect. For the reasons recorded above, I

proceed to pass the following order :

ORDER

i) Petition is allowed.

ii) Clause 3, 4 and 5 in the order of CGRF dated 05/04/2024, passed in CGRF Case No. 120/2023, is hereby quashed and set aside.

The Petition stand disposed of in above terms. No orders as to costs.

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare/Jayashree..