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

WRIT PETITION NO. 624 OF 2025

Maharashtra State Electricity Distribution Company,
Through its Superintending Engineer, Yavatmal Circle,
MIDC Lohara, Darwha Road, Vidyut Bhawan, Yavatmal. **PETITIONER**

VERSUS

Vaibhav Spintex Pvt.Ltd., Through its Director,
Usha Sunil Bhandari, Gat No.243, Moharli,
Taluka Wani, Dist. Yavatmal. **RESPONDENT**

Shri S.V. Purohit, Counsel for the petitioner.
Shri H.R. Gadhia, Counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE ON WHICH THE ARGUMENTS WERE HEARD : JULY 23, 2025
DATE ON WHICH THE JUDGMENT IS PRONOUNCED: OCTOBER 07, 2025

JUDGMENT

RULE. Rule made returnable forthwith. Heard finally by consent of the learned counsels for parties.

2. Petitioner-Maharashtra State Electricity Distribution Company has raised a challenge to the order dated 31.10.2024 passed by the Electricity Ombudsman, Nagpur in Representation No.59 of 2024 submitted by the respondent against the order passed by the Consumer Disputes Redressal Forum, Amravati by which the petitioner has been directed to refund the infrastructure cost with interest to the respondent.

3. The factual set up in which the controversy arose is briefly stated below :-

(i) Respondent-Vaibhav Spintex Pvt.Ltd., which is a H. T. (Non-SOP) Consumer initially submitted an application on 15.07.2021 for 1600 kVA Contract Demand on 33 kV voltage level for an industrial unit located in Wani, District Yavatmal. Since the application was incomplete, the same was not granted, and therefore, the respondent submitted another application on 08.11.2021 for new connection with Contract Demand of 1600 kV. In view of the demand raised by the respondent, a joint inspection was conducted and thereafter the respondent submitted an application thereby requested for connection under DDF (Dedicated Distribution Facility) scheme. The respondent was communicated by letter dated 31.08.2021 about inability to supply connection from 33 kV Moharli Sub-Station because of overloading and if the respondent can get the additional power transformer installed at its cost, the sanction could be granted.

(ii) In this background the respondent filed Case No.06/2021 before the Consumer Grievance Redressal Forum praying for sanction of the load or estimate. By order dated 24.09.2021, the complaint case was partly allowed and the petitioner was directed to sanction the estimate for the part of the work to be executed under DDF 1.3% scheme as consented by the respondent within ten days. The petitioner was directed to sanction the load and issue demand note within ten days by clearly mentioning that the supply will be released after commissioning of Additional Power Transformer.

(iii) Feeling aggrieved by this order, the respondent filed review petition before the Forum invoking Section 10 of MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulation, 2020. On 18.11.2021, the Forum passed final order on the review application and directed the petitioner to sanction application of the respondent for supply of 3200 KVA C.D. in phases on 33 KV level and issue demand note and connection within the stipulated time as per SOP Regulations 2021. In this background, the petitioner granted approval for sanction by its communication dated 13.12.2021, granting sanction under DDF as per provisions of Code 4.3.3, subject to various conditions enumerated in the said communication. Pertinently, the conditions contained various clauses about granting the sanction on non-refundable basis. The expenses were thus incurred by the respondent and it got the connection and the supply of electricity was released on 01.09.2022.

(iv) The respondent then filed a fresh grievance petition bearing No.60 of 2023 on 15.09.2023 seeking recovery of service connection charges with interest, recovery of infrastructure cost and refund of cost of two metering cubical alongwith interest.

(v) By order dated 17.11.2023, the Forum partly allowed the complaint and the petitioner was directed to refund the service connection charges with GST and the costs of 2 metering cubicals alongwith interest. Pertinent to note that the claim for refund of infrastructure cost was not granted by the Forum by this order.

(vi) The consumer filed an application for review on 18.12.2023 under Regulation of MERC (CGRF & Ombudsman) Regulations, 2020 challenging the rejection of claim for refund of infrastructure cost.

(vii) By its final order dated 01.03.2024, the review application filed by the respondent was rejected.

(viii) The respondent herein thereafter filed representation before the Electricity Ombudsman against the final order dated 01.03.2024 passed by the Forum rejecting the claim for infrastructure costs, *vide* Representation No.59 of 2024.

(ix) By order dated 31.10.2024, the representation was decided and the Electricity Ombudsman directed the petitioner to refund the infrastructure cost with interest as per bank rate.

(x) The petitioner is aggrieved by this order passed by the Electricity Ombudsman and has raised a challenge by way of the instant petition.

4. Shri S. V. Purohit, learned counsel for petitioner vehemently argued that the impugned order passed by the Ombudsman on the representation submitted by the respondent by upsetting the decision on review application is unsustainable in law. He submitted that the impugned order is passed without considering the most crucial document of approval of sanction granted by the Chief Engineer by its communication dated 13.12.2020. He submitted that the entire controversy revolved around the terms and conditions subject to which the sanction was approved and in absence of consideration of this crucial document, the claim of the respondent for refund of infrastructure cost could not have been decided. He also submitted that the Ombudsman has given undue consideration only to the minutes of the meeting dated 03.11.2021 and completely ignored the subsequent conduct of the respondent and the communications exchanged between the parties. He also submitted that the Ombudsman has rendered findings on the issue as to whether the connection given to the respondent as DDF connection, which had never arisen before the Authorities and it was raised for the first time in the representation before the Ombudsman. He thus submitted that the Ombudsman considered certain issues about which there were no deliberations before the Forum and which had not fallen for consideration before the Forum. He vehemently submitted that the issue before the Ombudsman was with

respect to deciding the legality of the order passed by the Forum in review jurisdiction and since the Ombudsman entered into deciding certain issues which were never raised before the Forum, he has exceeded his jurisdiction while passing the impugned order.

In support of his contentions, the learned counsel for the petitioner relied upon the unreported judgment of the Coordinate Bench of this Court in **Writ Petition No.1599 of 2019** [*Maharashtra State Electricity Distribution Company Limited, Nagpur Versus Electricity Ombudsman, Nagpur & Others*], dated 08.01.2020 and submitted that in view of the conduct of the respondent in agreeing to bear the expenditure which the respondent has actually incurred for installing the infrastructure facilities, further conduct in resiling from the consent terms does not entitle it to raise any claim for infrastructure cost.

5. Per contra, Shri H.R. Gadhia, learned counsel for respondent strongly opposed the petition. He submitted that the petitioner has suppressed the material facts recorded in the meeting dated 03.11.2021 which formed the basis for the respondent's claim for refund of infrastructure cost. He submitted that the petitioner had denied legitimate claim of the respondent for refund of infrastructure cost by unnecessarily raising the issue of SOP and non-SOP. He submitted that the most relevant issue about DDF connection is rightly given due consideration by the Ombudsman and the issues being interlinked, the consideration of all the issues cannot be treated as exceeding the jurisdiction. While referring to various clauses of the Supply Code Regulation 2021, he submitted that the impugned order sustains on the refund of infrastructure cost and the same is justified and needs no interference.

The learned counsel for the respondent placed heavy reliance on the judgment of the Hon'ble Supreme Court in *K.Jairam & Others Versus Bangalore Development Authority & Others* [**(2022) 12 SCC 815**] and submitted that in view of suppression of facts as regards the minutes of meeting dated 03.11.2021 by non-disclosure of the same in the memorandum of petition, makes the petition liable to be dismissed. He also relied on the unreported judgment of Coordinate Bench of this Court in **Writ Petition No.428 of 2019** [*Maharashtra State Electricity Distribution Company Limited, Akola Versus Azhar Ahmed Qaiser Ahmed*], **Writ Petition No.801 of 2020** [*Lalit Dwarkaprasad Gokulka Versus Maharashtra State Electricity Distribution Company Ltd., Yavatmal*] and **Writ Petition No.6619 of 2019** [*Maharashtra State Electricity Distribution Company Limited, Wardha Versus Mohan Pundlikrao Manmode & Another*]. By inviting my attention to the factual aspects of aforesaid writ petitions dealing with identical fact situations, he submitted that mere extensions or tapping of the existing low tension or high tension line could not be treated as Dedicated Distribution Facility and in view of Section 43 of the Electricity Act, 2003, it was the responsibility of the distribution licensee to make necessary arrangements to provide the electricity connections. He thus submitted that the respondent is entitled for refund of the infrastructure cost.

6. Rival contentions now fall for my consideration.

7. Challenge in this petition is to the order passed by the Ombudsman directing the petitioner to refund the infrastructure cost incurred by the respondent with interest. Thus, the main controversy is about entitlement of the respondent for refund of infrastructure cost in the wake of minutes of meeting dated 03.11.2021 and also in view of the approval for sanction as granted by the petitioner by its letter dated 13.12.2021.

8. By the impugned order, the Ombudsman has concluded that the Supply Code Regulations, 2021, Section 3.2(e) with second proviso allows the petitioner to give connections 1600kVACD on 33 kV level if there is system constraint to the petitioner for giving connection of 11 kV level. It is also inferred that the minutes of meeting were not honoured by the petitioner while preparing the estimate and further that the connection released to the consumer is tapped, shared and imposed, and hence does not fit into the definition of DDF. On the basis of these inferences stated in paragraph 5.10 of the impugned order, the Ombudsman has concluded that the respondent is eligible for getting refund of infrastructure cost.

9. It is pertinent to note that the main thrust of the petitioner is on the conditions of approval for sanction as elaborately stated in approval letter dated 13.12.2021. The essential conditions highlighted by the petitioner during the arguments are Condition Nos(b), (c), (d) and (j), which are reproduced below:-

> "***(b). The proposal being Non SoP level sanction is subjected to necessary compliance of documents and consent for DDF by applicant by field office S.E.(O&M) Circle Yavatmal. The sanction is subjected to condition that all the expenditure for release of such connection will be borne by consumer on non refundable basis.***
> ***(c). The sanction is subject to submission of undertaking by applicant to Circle office, for execution of work under DDF & expenditure for release of connection will be borne by applicant on non refundable basis. This undertaking for DDF will be scrutinized at Circle level before release of load.***
> ***(d). The cost of the DDF includes the 33 KV line & 33 KV bay at 33 KV Moharli S/s and the total cost of DDF is to be borne by the consumer.***
> ***(j). All the expenditure for release of such connection will be borne by applicant on non refundable basis.***"

There is no dispute that the approval was granted subject to the conditions and it was incumbent upon the Authorities to consider the issue about meticulous compliance of these conditions by both the parties. The impugned order passed by the Ombudsman is silent about consideration of this vital document. The impugned order appears to have been passed by considering only the issue of SoP-Non SoP with DDF and on the basis of these issues, it is inferred that the officials of the petitioner-Company have made certain goof-ups and on the basis of this unilateral inference, the directions were issued to the Chief Engineer, Amravati to take action against the responsible employees of the petitioner-Company.

10. A perusal of the impugned order shows that while considering the representation submitted by the respondent after rejection of his review application before the Consumer Forum, certain issues were considered for the first time, ignoring the vital issue related to the terms and conditions of approval mentioned above. It is pertinent to note that the Consumer Grievance Redressal Forum while deciding Case No.60 of 2023 has not at all granted infrastructure cost, although a claim was raised by the respondent. Further in the Review Petition bearing No.84 of 2023, after considering the entitlement of the respondent in detail, the Forum has categorically rejected the claim for infrastructure cost. It has to be noted that the Forum consisted of a Chairman and two Members, one of whom is a Technical Member. The issue about grant of entitlement for infrastructure cost, in the wake of SoP-Non SoP and DDF issues, was required to be determined by a technical person and the Forum consisting of the technical experts has decided the issues rejecting the entitlement of the respondent for refund of infrastructure cost. Under these

circumstances, a representation submitted by the respondent to the Ombudsman is entertained and finally the entitlement of the respondent for infrastructure cost is determined by ignoring the well reasoned orders passed by the Forum.

11. Although the learned respective counsel for the petitioner as well as the respondent made elaborate submissions on technical issues involved in the writ petition, it has to be noted that the decision on technical issues has to be based on opinion of the technical experts. The entitlement of the respondent for infrastructure cost in the background of SoP-Non SoP and DDF issues falls in the domain of technical experts.

In this regard, even the position of law is clarified by the Hon'ble Supreme Court in the judgment of *Maharashtra State Electricity Distribution Company Limited Versus Adani Power Maharashtra Limited & Others* [**(2023) 7 SCC 401**]. Paragraph 121 of which reads as under:-

> "*121. Recently, the Constitution Bench of this Court in Vivek Narayan Sharma (Demonetisation Case-5 J.) V. Union of India has held that the Courts should be slow in interfering with the decisions taken by the experts in the field and unless it is found that the expert bodies have failed to take into consideration the mandatory statutory provisions or the decisions taken are based on extraneous considerations or they have ex facie arbitrary and illegal, it will not be appropriate for this Court to substitute its views with that of the expert bodies.*"

As such, in the wake of technical issues involved in this matter, this Court is not required to delve into that domain and the main angle of consideration by this Court is about compliance with statutory provisions and justness of the impugned decision by consideration of relevant documents.

12. Albeit, the expertise of the Electricity Ombudsman to deal with technical issues is not doubted, but, in the peculiar facts of this case, the vital document of approval of sanction vide letter dated 13.12.2021 was required to be considered *vis-a-vis* the minutes of meeting and other communications exchanged by the parties in the wake of readiness of consumer to bear the infrastructure cost vide several documents. The issue about refund of infrastructure cost ought to have been decided by considering every material document and giving due consideration to the reasons recorded by the Forum while rejecting the claim for refund of infrastructure cost.

13. As such, the entire controversy in the instant writ petition is about the entitlement of the respondent towards infrastructure cost. The primary contentions of the petitioner are based on the terms and conditions for grant of approval for sanction as stated in the letter dated 13.12.2021. This vital document is not at all considered by the Ombudsman while passing the impugned order. The issues which are given elaborate considerations dealing with SoP-Non SoP-DDF issues, if at all were required to be considered, the same ought to have been considered in the backdrop of the terms and conditions mentioned in the approval letter. While passing the impugned order, certain observations were made about goof-ups by the officials of the petitioner-Company and the directions issued for initiating action against the staff would have serious consequences on the concerned officials. As such, in view of the entire controversy as demonstrated before me, I find this to be a fit case for remand of the matter to the Ombudsman for considering all the issues afresh after giving due opportunity of hearing to all the parties.

14. In view of aforesaid discussion, the following order is passed:-

I. The impugned order dated 31.10.2024 passed by the Electricity Ombudsman, Nagpur is quashed and set aside.

II. The matter is remanded to the Electricity Ombudsman, Nagpur to consider the representation submitted by the respondent afresh after considering all the relevant documents and affording due opportunity of hearing to the parties concerned.

III. The Electricity Ombudsman, Nagpur is requested to expeditiously decide the aforesaid proceedings.

15. Rule is made absolute in aforesaid terms. The writ petition stands disposed of. No costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE