

(2020) 01 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 4376, 4446 Of 2016

Maharashtra State Electricity Distribution Co. Ltd. And Ors

APPELLANT

Vs

Ramakant Vithobaji Gaikwad And Ors

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Electricity Act, 2003 — Section 43, 43(1), 45, 50, 56, 62(6), 181

Citation : (2020) 01 BOM CK 0034

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : A.M. Quazi, Ramakant Vithobaji Gaikwad, R.V. Gaikwad

Final Decision : Allowed

Judgement

1] In both these matters, the issue involved is common and hence both the petitions are being take up together.

2] By the ad interim order dated 1.3.2017 passed by this Court, the impugned judgments delivered by the Ombudsman dated 15.3.2016 in Representation Nos.111/2014 and No.112/2015, have been stayed. I have heard the learned Advocate for the petitioner company and Shri R.V. Gaikwad, in his personal capacity as respondent No.1 in the first matter. I have considered his submissions on behalf of respondent No.1 in the second petition (W.P. No.4446/2016) since he appears as an Advocate for the said respondent namely Rajiv P. Dhoble.

3] Though I have noted the extensive submissions of the parties, I am not required to consider their entire submissions in view of the peculiar facts of these cases before this Court.

4] Respondent No.1 namely Ramakant Vithobaji Gaikwad has been consumer of electricity with the petitioner company. He is the owner of the property Plot No.3 Bhamti Parsodi Street in Layout of Ganeshpur Gruha Nirman Sahakari Sanstha Ltd., Nagpur which had 5 electricity meters standing in the name of M/s Harshal

Printings Private Limited and also in the name of Mr. Harshal, who is his son. It has emerged from the record that in 2002 and in 2011 the electricity connections which were installed on Plot No.3 have been discontinued on account of non-payment of electricity charges. It was in 2014 that respondent No.1 Mr. Gaikwad along with developer Rajiv P. Dhoble - respondent No.1 in the second petition, who was a partner in M/s Swastik Developers, commenced developmental activities on Plot No.3. The development plan was for erecting a building with 8 flats. Out of these 8 flats, 6 were to be sold to purchasers from the open market and 2 flats were to be retained by Shri Ramakant Gaikwad.

5] The owner of Plot No.3 Shri Ramakant Gaikwad executed a power of attorney document in favour of the developer Rajiv P. Dhoble so as to enable M/s Swastik Developers to commence the developmental activities. It was in pursuance thereof that M/s Swastik Builders sought 8 independent electricity connections from the petitioner company so as to enable the allotment of separate electricity / connection to each of the flats. In the face of this step being taken by the builder, the petitioner invoked Clause 10.5 of the 2005 Regulations framed under the Electricity Act, 2003 and sought recovery of the unpaid amounts towards the earlier bills.

6] As a precondition for allotting 8 electricity connections, the petitioner company demanded the payment of the entire arrears of unpaid electricity charges emerging from the activities conducted in Plot No.3 for an amount of Rs.3,49,200/- from Harshal Printers and Rs.1,610/- from Mr. Harshal. Both the respondent Nos.1, in these two petitions approached the competent Authority leading to the impugned orders by which the Ombudsman set aside the orders of the CGRF dated 24.11.2015 and partly allowed the Representation Nos.111/2015 and 112/2015 filed by Shri Gaikwad and Shri Dhoble. The petitioner was directed to pay compensation of Rs.1,800/- to Shri Gaikwad and to refund the amount of Rs.1,11,570/- and Rs.350/- along with interest at the bank rate from 16.1.2015 under Section 62(6) of the Electricity Act.

7] The respondent No.1 party in person Shri Gaikwad argued on behalf of himself and on behalf of respondent No.1 in the second petition that the petitioner company had never raised any such bill and there was no demand of such payment on account of which the electricity connections were discontinued as long ago as in 2002. When called upon to make a statement as to whether amounts sought to be recovered by the petitioner are without raising any bill, the party in person changed his version and stated that the said amount was demanded as a part of a bill, but on the pretext that it was arrears of unpaid bills. Thereafter, he further submitted that the company had also taken a stand that the persons utilizing Plot No.3 had allegedly stolen electricity and it was on account of electricity theft that such bills were raised without the company proving whether there was any such theft.

8] I am not considering this submission as regards the theft of the electricity for the reason that it is not the subject matter emerging from these petitions. The

issue in these two petitions is whether the petitioner company can recover certain portion of unpaid amount due from the earlier users of Plot No.3 independently when M/s Harshal Printers, was operated by the son of the party in person.

9] I find from the impugned orders that Clause 10.5 of the 2005 Regulations have not been referred to at all. In order to verify as to whether Regulation 10.5 was raised before the Ombudsman, I called upon the learned Advocate for the petitioner to point out as to whether the Ombudsman was obliged to consider Regulation 10.5. He has pointed out from paragraph Nos.12 and 14 of the reply dated 16.11.2015 filed by the petitioner company before the CGRF in Complaint No.151/2015 that was filed by the party in person. It cannot be disputed that the Ombudsman was considering the decision of the CGRF in accordance with law and as such all the pleadings before the CGRF were obviously a part of the record before the Ombudsman. I find from the impugned order that the Ombudsman has not even cared to refer to Regulation 10.5, much less discussed such Regulation and decided the case based on the said provision.

10] Though the party in person has vehemently contended that Regulation 10.5 is purely a limitation clause and does not give a right to the petitioner company to seek recovery of unpaid amounts as charges towards electricity even for a period of six months preceding the date of reference which is the disconnection of the electricity meters, I find that the said submission need not be entertained in view of a direct judgment delivered by the learned Division Bench of this Court at the Principal Seat dated 16.9.2011 in Writ Petition No.9906/2010 in the matter of M/s Namco Industries Private Limited V/s. The State of Maharashtra and others.

11] It would be apposite to reproduce paragraph Nos.9, 10, 11 and 18 of the judgment delivered in M/s Namco Industries Private Limited V/s. The State of Maharashtra and others (supra) hereunder:-

"9. The Indian Electricity Act of 2003 provides in sub-section (1) of Section 43 that save as otherwise provided in the Act every distribution licensee shall on an application by the owner or occupier of any premises, give supply of electricity to such premises within one month after receipt of an application requiring such supply. Under Section 45 the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of Section 43 shall be in accordance with the tariffs prescribed from time to time and the conditions of his license. Section 50 provides that the State Commission shall specify an Electricity Supply Code to provide inter alia for the recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment, restoration of supply of electricity and other specified matters.

10. The Regulations of 2005 have a statutory character. They are inter alia referable to Section 50 under which an Electricity Supply Code can be formulated, and to Section 181 under which the State Commission is entitled to

make Regulations consistent with the Act and the rules to carry out the provisions of the Act. Under Regulation 3 a distribution licensee is authorized to recover charges for the supply of electricity from any person requiring such supply in accordance with the provisions of the Act and the Regulations. Regulation 4 provides for an application for supply, Regulation 5 lays down the procedure for processing of applications and Regulation 6 for an agreement between the distribution licensee and the Applicant. Regulation 10.1 provides that a connection may be transferred in the name of another person upon death of the consumer, or in case of transfer of ownership or occupancy of the premises, upon application for change of name by the new owner or occupier.

Regulation 10.5 provides as follows:

"10.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be;

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises."

(emphasis supplied).

11. Regulation 10.5 provides three consequences in law.

First, a charge for electricity or any other sum due to the distribution licensee which remains unpaid constitutes a charge on the premises; second, the charge continues to subsist despite the transmission of the premises upon the death of the consumer or the transfer of the premises to a new owner. Third, the unpaid electricity dues can be recovered by the distribution licensee from the legal representatives of the deceased consumer or successors-in-law or from the new owner or occupier of the premises, as the case may be. The qualification, however, that is imposed is that except in the case of a transfer of a connection to a legal heir, the liabilities which are transferred under Regulation 10.5 are restricted to a maximum period of six months of the unpaid charges for electricity supplied to the premises.

18. Having regard to the position in law which is now enunciated in Regulation 10.5 of the Regulations, it is evident that the unpaid dues of the Fifth respondent did constitute a charge on the property. These dues could legitimately be recovered by the Second Respondent from the Petitioner, as subsequent transferee. The submission of the Petitioner that the Petitioner is entitled to seek

a fresh connection of electricity supply to which the liability to pay the dues of the erstwhile owner will not be attracted is without any substance. The charge attaches to the property and the distribution licensee is entitled to recover the unpaid dues from the new owner. Acceptance of the submission would result in a situation where an owner of the premises could utilize electricity and upon a subsequent transfer, the transferee would not be liable to pay the arrears. The distribution licensee would be left with virtually no recourse whatsoever and this is exactly the situation which the Supreme Court emphasized in its judgment in Paschimanchal Vidyut Vitran Nigam Limited."

12] The party in person has canvassed that Regulation 10.5 would not stand in the light of the Electricity Act, 2003 considering Section 56 of the Act. I find this submission to be equally fallacious for the reason that the learned Division Bench in M/s Namco Industries Private Limited V/s. The State of Maharashtra and others (supra) has dealt with the Electricity Act, 2003 and Regulation 10.5 and has concluded in paragraph No.11 that Regulation 10.5 has three consequences. To avoid repetition the said three consequences are found in paragraph 11, reproduced above.

13] In the judgment delivered by the learned Single Judge of this Court at the Nagpur Bench in the matter of Maharashtra State Electricity Distribution Company Limited V/s Electricity Ombudsman and another (2014 (1) Mh.L.J. 930), Regulation 10.5 was once again considered and made applicable to the extent of the recovery of unpaid electricity charges from the subsequent user of the same premises. As such, it is quite obvious that the unpaid dues which were recoverable from M/s Harshal Printers and Mr. Harshal, did constitute a charge on the property. The party in person Shri Gaikwad is the owner of the said property and now seeks to utilize the said property for a different purpose and does not desire to pay the unpaid amounts on the pretext that Section 56 of the Electricity Act would become applicable.

14] I find from Regulation 10.5 and in view of the law laid down in M/s Namco Industries Private Limited V/s. The State of Maharashtra and others (supra) that the petitioner company would be entitled for the recovery of that quantum of unpaid electricity charges which were recoverable over a period of the last six months of the unpaid charges. Naturally, this period of six months has to be considered from the date of reference and, therefore, to be computed from the preceding six months to the last month in which unpaid charges had become payable.

15] I have no hesitation in concluding in the light of the above, that the Ombudsman has completely lost sight of Regulation 10.5. In fact, Regulation 10.5 was cited before him in the form of pleadings and yet he has not cared to consider the same.

16] Considering these facts in the backdrop of Regulation 10.5, both these petitions are allowed and the impugned order of the Ombudsman stands quashed

and set aside. The petitioner would be entitled to an amount of Rs.1,11,570/- which has been deposited with the petitioner company on 16.1.2015 pursuant to the interim order of the Ombudsman.