(2013) 07 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 422 of 2013

Maharashtra State Electricity Distribution Company Limited APPELLANT

Vs

Electricity Ombudsman and Dr. Neelima Deshmukh RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:
Electricity Act, 2013 — Section 2(15)

Citation : (2014) 1 ABR 722 : (2013) 5 ALLMR 875 : (2013) 5 BomCR 702 : (2014) 1 MhLj 930

Hon'ble Judges : R.Y. Ganoo, J

Bench : Single Bench

Advocate : S.V. Purohit, for the Appellant; C.V. Kale, Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

R.Y. Ganoo, J.—Rule. Rule made returnable forthwith. Respondent No. 1 is not a contesting party hence its presence is not required for disposal of this appeal. Learned advocate Mr. C.V. Kale waives service on behalf of respondent No. 2. The petition is taken up for final hearing. The petitioners have challenged order dated 30.10.2012 passed by the Electricity Ombudsman, Nagpur in Representation No. 72/2012.

2. Few facts necessary for disposal of this petition are as under:-

One Mr. Parse was the proprietor of a firm by namely M/s. Himalaya Ice Factory and was in possession of plot No. W-4/4 situate at MIDC, Hingna, Nagpur. Said Mr. Parse enjoyed electricity supply duly supplied by the petitioners. As the bills raised by the petitioners were not paid from time to time, there was arrears to the extent of Rs. 5,31,470/-. On account of nonpayment of the electricity charges, the electricity connection was disconnected on 19.3.1991. At the instance of the Maharashtra State Financial Corporation the said plot No. W-4/4 for sale with the intervention of court and respondent No. 2 purchased the said property in auction on 28.6.1992. Thereafter, in order to have electricity supply to the said property and to carry on the activities of the factory, the respondent No. 2 filed applications on 22.6.2008, 22.12.2008, 12.2.2009 and lastly on 25.1.2012. In so far as these applications are concerned, by letter dated 22.1.2009 the respondent No. 2 was informed by the petitioners that unless the outstanding dues in regard to the electricity connection, which was then in existence and through which electricity was supplied before its disconnection, are paid, the respondent No. 2 would not be able to get electricity supply. Similar reply was sent in regard to the application dated 26.1.2012 and the petitioners maintained their stand that unless the dues of M/s. Himalaya Ice Factory are not paid, the connection will not be made available. The respondent No. 2 felt aggrieved by the decision of the petitioners and therefore the respondent No. 2 filed proceedings before the Maharashtra State Electricity Distribution Company Ltd. Consumer Grievance Redressal Forum, Nagpur Urban Zone, Nagpur (hereinafter referred to as the Consumer Grievance Redressal Forum) being case No. CGRF(NUZ)/46/2012. The said forum entertained the complaint as regards non-furnishing electricity connection to respondent No. 2 and by order dated 7.6.2012, the said proceedings namely grievance application was dismissed.

3. Against the aforesaid order dated 7.6.2012, the respondent No. 2 filed Representation No. 72/2012 before the Electricity Ombudsman, Nagpur. The Electricity Ombudsman, by order dated 30.10.2012, granted relief to the respondent No. 2 by passing the following order.

(a) The Representation is partly allowed.

(b) The order of the Forum dated 7.6.2012 in Case No. CGRF(NUZ)/46/2012 is set aside.

(c) It is hereby declared that the liability of the appellant is restricted to a maximum period of six months of the unpaid charges for electricity supplied to the premises of the erstwhile owner/consumer.

(d) The respondent is directed to quantify the said liability and intimate it to the appellant within two weeks from the date of communication of this order

(e) The respondent shall grant electric connection to the appellant immediately after payment of the amount quantified as above.

(d) No order as to costs.

A reading of the said order would go to show that the petitioners were directed to supply electricity to respondent No. 2 and it was clarified that the petitioners would be able to recover from respondent No. 2 the unpaid charges for electricity supply to the premises of the erstwhile owner/consumer by restricting the said charges for a period of six months. This order dated 30.12.2012 is challenged in this petition.

4. I have heard learned advocate of both sides. Learned advocate Mr. Purohit appearing on behalf of the petitioners contended that the original proceedings

filed by the respondent No. 2 before the Consumer Grievance Redressal Forum could not have been entertained as the same were filed beyond the period of limitation. In support of this contention, learned advocate Mr. Purohit relied upon the provisions of Regulation 6.5 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations). The leaned advocate Mr. Purohit pointed out that there was a specific bar for entertaining the application by the forum if the said application is not filed within a period of two years from the date on which the cause of action arose. Learned advocate Mr. Purohit drew my attention to the text of the application filed before the Consumer Grievance Redressal Forum where the respondent No. 2 has referred to the dates on which the cause of action accrued to her namely 26.6.2008, 22.12.2008, 12.2.2009 and 25.01.2012. According to the learned advocate Mr. Purohit, there is a clear admission on the part of the respondent No. 2 that the cause of action accrued to her on 26.6.2008 and if that date is considered, the period of two years will be over by 26.6.2010 and therefore the reference filed in the year 2012 ought to have been treated as beyond the period of limitation.

5. In so far as this aspect is concerned, learned advocate Mr. C.V. Kale submitted that the last application for electricity connection was filed on 25.1.2012 and the same was rejected and that is how the reference filed in the year 2012 will have to be treated as within the period of limitation.

6. So far as this point is concerned, I am inclined to accept the arguments advanced by learned advocate Mr. C.V. Kale, as according to me, merely because the application was once rejected long back i.e. prior to 25.1.2012, it cannot be said that the respondent No. 2 was prohibited from making an application afresh on the basis of changed circumstances. In my view, in the peculiar facts and circumstances of the case, the application filed on 25.1.2012 will have to be treated as a fresh cause of action to respondent No. 2. Accordingly reference filed on 11.4.2012 will have to be treated as having been filed within the period of limitation. Hence, I am inclined to reject the arguments advanced by the learned advocate for the petitioners that the reference before the Consumer Grievance Redressal Forum was filed beyond the period of limitation.

7. It was also argued by the learned advocate for the petitioners that on account of the provisions of Regulation 6.7 of Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations it was not open for the respondent No. 2 to file an application before the said Forum. According to the learned advocate for the petitioners, the provisions of aforesaid Regulation 6.7(d) would operate on account of a decree passed in Spl. Civil Suit No. 1215/1993 by the learned 3rd Joint Civil Judge, Sr. Dn., Nagpur on 22.11.1999 to the tune of Rs. 5,26,255/- against Mr. Parse, proprietor of M/s. Himalaya Ice Factory. On account of this decree Respondent No. 2 could not have filed the aforesaid application. Learned advocate Mr. Kale appearing on behalf of he respondent No. 2 in reply to this

submission submitted that the provisions of Regulations 6.7(d) of the aforesaid Regulations will not be applicable to the facts of this case, as the application was filed by the respondent No. 2 before the Forum and the respondent was not a consumer who had filed a grievance before the forum. According to the learned advocate Mr. Kale, the respondent No. 2 was not a consumer of the petitioners and at the best Mr. Parse could have been called as a consumer of the petitioners. Learned advocate Mr. Kale, therefore, submitted that the Regulations 6.7(d) of the aforesaid Regulations cannot be applied to the facts of this case and, therefore, the arguments advanced by learned advocate for the petitioners should be rejected.

8. I have considered the submissions of both sides. At this stage it will be proper to quote Regulation 6.7(d) of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations which reads as under:-

6.7 (d) where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.

It will also be proper to quote the definition of the term ''consumer'' appearing in Section 2(15) of the Electricity Act, 2013 as the aforesaid Regulation uses the word ''consumer''. The definition of the word ''consumer'' appearing in Section 2(15) is as follows:

2.(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

9. A joint reading of the Regulation 6.7(d) and the definition 2(15) of the Electricity Act would clearly go to show that to the facts of this case, the bar would be applicable so far as Mr. Parse is concerned, as he is termed as a ''consumer''. In any case, respondent No. 2 cannot be termed as a ''consumer'' as per in Section 2(15) of the said Act. There was no bar in entertaining the proceedings filed by the respondent No. 2. In my view, the provisions of Regulation 6.7(d) are not attracted to the proceedings which were initiated before the Consumer Grievance Redressal Forum by respondent No. 2. In the result, the argument advanced by learned advocate Mr. Purohit based on provision of Regulation 6.7(d) is rejected.

10. Learned advocate Mr. Purohit appearing on behalf of the petitioners thereafter took me through the order passed by the Electricity Ombudsman whereby the Electricity Ombudsman has allowed the representation and limited the liability of respondent No. 2 to pay the arrears to the extent of six months. Learned advocate Mr. Purohit submitted that in so far as the recovery of arrears

and not granting the new connection to respondent No. 2 is concerned, the provisions of Regulation 10.5 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other conditions of Supply) Regulations, 2005 (for short Electricity Supply Code Regulation) are attracted. Learned advocate Mr. Purohit has taken me through the provisions of Regulation 10.5 and has submitted that if any charge for electricity is outstanding then the same can be recovered from a person to whom the property is transferred or the occupier of the said premises where the new electricity connection is sought. Learned advocate Mr. Purohit has submitted that the learned Electricity Ombudsman brought the case of respondent No. 2 within the proviso to Regulation 10.5 though it was not the case of respondent No. 2 that respondent No. 2 succeeded to the property in question as a legal heir of said Mr. Parse. The learned advocate Mr. Purohit submitted that once it is held that the case of the respondent No. 2 does not fall within the proviso to Regulation 10.5 then the petitioners were justified in maintaining their stand that unless the arrears to the tune of rupees five lakhs and odd amount are paid by respondent No. 2, the respondent No. 2 would not be able to get new connection to the premises which were purchased by the respondent No. 2. Learned advocate Mr. Purohit also submitted that on a plain reading of Regulation 10.5 it is absolutely clear that if certain dues for electricity are outstanding and they are payable by a deceased consumer or the erstwhile owner/occupier of any premises, it will stand as a charge on the premises transmitted to the legal representatives/successors in law or transferred to the new owner/occupier of the premises and the same shall be recoverable by the petitioners. The learned advocate for the petitioners Mr. Purohit further submitted that it cannot be disputed by respondent No. 2 that charges to the tune of rupees five lakhs and odd amount are outstanding against the premises which were once upon a time owned by Mr. Parse. Learned advocate Mr. Purohit further submitted that it cannot be disputed that the respondent No. 2 is a new owner of the premises or in any case she is occupier of the new premises. The learned advocate Mr. Purohit, therefore, submitted that once it is accepted that Regulation 10.5 is attracted to the facts of this case, the petitioners were justified in not granting electricity connection to the respondent No. 2 unless the respondent No. 2 pays the outstanding amount. Learned advocate Mr. Purohit further submitted that payment of the outstanding amount were put up as a condition precedent for giving electricity supply to the respondent No. 2 based on the provisions of Regulation 10.5. Learned advocate Mr. Purohit submitted that the view of the petitioners is supported by the observations of this court in the case of Akanksha International Vs. Maharashtra State Electricity Distribution Co. Ltd., . Learned advocate Mr. Purohit read to the court the said judgment and pointed out that by the said judgment it is held by this court that recovery of the dues by the petitioners by institution of a civil suit is one of the remedies and the alternate remedy provided under law will not come in the way of the petitioners in insisting on clearing of arrears before the power supply is restored or new power connection is given. Learned advocate Mr. Purohit read to me paragraph 31 of the aforesaid judgment and submitted that the condition put up by the petitioners was a reasonable condition and the same has been now accepted by the court and therefore the petitioners stand that unless respondent No. 2 pays the dues which are to the tune of rupees five lakhs and odd, the respondent No. 2 will not be able to get new connection, is legal and proper. The leaned advocate Mr. Purohit for the petitioners submitted that in any case the Electricity Ombudsman was wrong in holding that the case falls within the proviso to Regulation 10.5. He further submitted that the contention of the petitioners that the respondent No. 2 should pay all the outstanding dues of M/s. Himalaya Ice Factory is required to be accepted and the judgment and order dated 30.10.2012 will have to be set aside.

11. Learned advocate Mr. Kale appearing on behalf of the respondent No. 2 submitted that the provision of Regulation 10.5 is independent of other aspects of the matter and does not permit petitioners putting up the condition precedent for giving a new connection and therefore the stand of the petitioners that respondent No. 2 should first pay off the dues of M/s. Himalaya Ice Factory and then only the respondent No. 2 would be able to get new connection cannot be accepted. Learned advocate Mr. Kale therefore submitted that the impugned order passed by the Electricity Ombudsman will have to be upheld to the extent it deals with the question of liability.

12. Learned advocate Mr. Kale has also taken a contention that the said Electricity Supply Code came into effect from 20.1.2005. He further pointed out that the respondent No. 2 had acquired the ownership in respect of the property on 28.6.1992 and therefore the Electricity Supply Code in particular Regulation 10.5 cannot apply to the facts of this case and the condition put up by the petitioners that respondent No. 2 should pay the dues to the extent of rupees five lakhs and odd is illegal and should not be accepted by the court and that the petitioners be directed to supply electricity forthwith.

13. I have considered the rival submissions. At the outset, I propose to deal with the arguments advanced by the learned advocate Mr. Kale appearing on behalf of the respondent No. 2 with reference to application of Electricity Supply Code to facts of this case. The Electricity Supply Code came into force from 20.1.2005. It is true that the electricity connection was disconnected on 19.3.1991. It is also true that respondent No. 2 acquired ownership right in the premises, then held by M/s. Himalaya Ice Factory, on 28.6.1992. At the same time, the respondent No. 2 applied for electricity connection for the said premises on 22.6.2008 and the last application was filed on 25.1.2012. I have already indicated that it is the last application dated 25.1.2012 which is being considered for the purpose of entertaining the application which was filed before the Consumer Grievance Redressal Forum. If date of application for supply is treated as 25.1.2012 then the respondent No. 2 had requested the petitioners to supply electricity by way of a communication only after the Electricity Supply Code came into effect. In my view, on what date respondent No. 2 acquired ownership in respect of the property would hardly be relevant. What would be relevant is the date on which

the application was filed by the respondent No. 2. On this count, the argument advanced by learned advocate Mr. Kale that the Electricity Supply Code does not apply to the facts of this case cannot be accepted.

14. Now comes the question whether Regulation 10.5 would be applicable to the facts of this case. It would be convenient to quote Regulation 10.5.

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.

15. A bare perusal of this regulation would indicate that it takes care of a situation where a person who was having electricity connection, has not paid the charges and the said person has died or the premises are transferred to a new person or the possession of the said premises is transferred to new person. As per Regulation 10.5 unpaid electricity charges payable by earlier owner or person in possession can be recovered from the new person. A proviso is added to Regulation 10.5 which indicates that if the transfer in respect of the premises takes place on account of succession, the liability can be limited to the extent of six months for such an heir. In so far as this case is concerned, the respondent No. 2 has purchased the property in question in the public auction. Therefore, the case of the respondent No. 2 shall not fall within the proviso of Regulation 10.5. It is on this count, the view taken by the Electricity Ombudsman that the case of respondent No. 2 falls within the proviso is illegal and cannot stand.

16. Then comes the question whether the first part of Regulation 10.5 can be acted upon by the petitioners and whether the petitioners are justified in asking the respondent No. 2 to clear of the dues of M/s. Himalaya Ice Factory and then expect new electricity connection. Learned advocate Mr. Purohit appearing on behalf of the petitioners relied on paragraph 31 of the judgment in the case of Akansha International Vs. Maharashtra State Electricity Distribution Co. Ltd. (supra). It will be proper to quote this paragraph 31 at this juncture itself.

31. So far as the filing of Special Civil Suit by the respondent against erstwhile owners i.e. M/s. Amar Amit Company is concerned, that is an alternate remedy provided by law and that will not come in the way of the respondent in insisting on clearing of arrears before the power supply is restored or new power connection is given

17. Learned advocate Mr. Purohit submitted that the words appearing in this paragraph 31 that "and that will not come in the way of the respondent in insisting on clearing of arrears before the power supply is restored or new power connection is given" is a view taken by this court so as to approve the stand of the petitioners that the electricity company can insist that unless the outstanding dues are paid, a person who was applying for a new connection cannot get the said new connection.

18. I have perused the aforesaid paragraph 31. The arguments advanced by learned advocate Mr. Purohit on the basis of paragraph 31 are accepted and it is on that count the stand taken by the petitioners that the respondent No. 2 will have to pay all the outstanding dues to the extent of rupees five lakhs and odd will have to be accepted for the purpose of giving connection to the respondent No. 2. In my view, the contention raised by the petitioners that the respondent No. 2 ought to pay the dues first and then only the respondent No. 2 would get the new connection is required to be accepted.

19. For the reasons mentioned aforesaid, the order dated 30.10.2012 passed by the Electricity Ombudsman, Nagpur in Representation No. 72/2012 will have to be quashed and set aside as prayed for in terms of prayer clause (1) of the petition. For the reasons aforesaid, the following order is passed to dispose of the petition.

ORDER

1. The order dated 30.10.2012 passed by Electricity Ombudsman, Nagpur in Representation No. 72/2012 is set aside.

2. The stand of the petitioners that respondent no. 2 will have to pay the outstanding dues of M/s. Himalaya Ice Factory as and by way of condition precedent for getting the new connection is hereby accepted.

3. Petition stands disposed of accordingly with no order as to costs.

