

(2011) 06 BOM CK 0093

In the Bombay High Court

Case No : Writ Petition No. 4059 of 2010

Maharashtra State Electricity Distribution Company Limited APPELLANT
Vs

Shree Steel Casting Private Limited and Consumer Grievance RESPONDENT
Redressal Forum, MSEDCL

Date of Decision : 21-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 6 BomCR 456

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : S.V. Purohit, for the Appellant; Boralkar, for R-1 and R-2, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

2. The above writ petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 10.03.2010 passed by the Consumer Grievance Redressal Forum of the Petitioner company, by which order Case No. CGRF(NUZ)072/2009 filed by the Respondent No. 1 herein came to be decided in his favour and the Respondent No. 1 was directed to be treated as HT-I non continuous consumer. The Petitioner also challenged the corrigendum dated 26.03.2010, which has been issued to the order passed by the Consumer Grievance Redressal Forum.

3. The facts involved in the above petition, in brief, can be stated thus.

The Respondent No. 1's factory is situated in the MIDC Hingna, Nagpur, the Respondent No. 1 is an HT consumer connected on 33 KV with connected load of 3477 KW and the contract demand of 3000 KV and connected as such w.e.f. 05.06.1995. The supply of electricity to the consumer is governed by the tariff

orders issued by the Maharashtra Electricity Regulatory Commission (MERC) from time to time. In the meeting dated 21.03.2009 of the Petitioner-company, it was resolved that a consumer connected on express feeder can opt for non continuous tariff by taking consent of all the consumers. The said choice was to be exercised within the time limit specified in the tariff order. The Respondent No. 1 herein notwithstanding the fact that it is a HT consumer connected to express feeder filed a grievance before the CGRF, Nagpur under the MERC Regulation 2006 praying for a direction against the Petitioner to revise all the energy bills of the Respondent No. 1 from 01.06.2008 by applying the non express feeder tariff. The Petitioner distribution company filed its reply to the said grievance. The CGRF, Nagpur thereafter passed the impugned order dated 10.03.2010 holding that the Respondent No. 1 herein was HT-I non continuous consumer and directed the Petitioner company to revise all the energy bills from 01.06.2008. In so arriving at a finding that the Respondent No. 1 was on HT-I non continuous consumer, the CGRF has passed the order relying upon the definition of "Dedicated Distribution Facilities" under the MERC (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005. The CGRF also took into consideration the fact that since one more consumer is getting supplied from the same feeder and his premises is not a contiguous premises, the Respondent No. 1 cannot be considered as on express feeder.

4. The CGRF thereafter issued a corrigendum inter alia modifying the directions contained in the operative part of the order dated 10.03.2010 to the effect that the Respondent No. 1 should be given the said benefit of HT-I non continuous consumer and should be charged tariff applicable to the said class of consumer at least from 30.03.2009, on which purportedly the Respondent No. 1, has filed an application for change of classification. As indicated above, it is the said two orders which are impugned in the present petition.

5. Heard the learned Counsel for the parties. On behalf of the Petitioner distribution company Shri S.V. Purohit, learned Counsel for the Petitioner submitted that CGRF has erred in relying on the definition of "Distribution Supply Facilities" which finds place in the MERC Regulation, 2005. According to the learned Counsel, the said definition would have no application in respect of a consumer who is said to be enjoying the facility of express feeder. The learned Counsel would further contend that the said class of consumers i.e. who are on express feeder are consumers who get uninterrupted supply of electricity, notwithstanding the staggering holiday, which is observed on a particular day of the week. The learned Counsel further contended that though a consumer is classified to be on express feeder and categorized as HT-I continuous, he can get his classification changed when the new tariff order is issued by the MERC and within the time stipulated in the said tariff order. According to the learned Counsel, in the instant petition the application purportedly filed by the Petitioner for change in classification on 30.03.2009 was not within the time stipulated in the tariff order dated 01.06.2008.

6. Per contra, Shri S.P. Boralkar, learned Counsel on behalf of the Respondent No. 1 submitted that considering the definition of the distribution facilities, the order passed by the CGRF, cannot be faulted with. It is further submitted by Shri Boralkar, that since one more consumer namely, Nagpur Alloy Casting is getting supply from the consumer feeder and his premises is not a contiguous premises, he cannot be considered as on express feeder. The learned Counsel would contend that the points sought to be raised in the instant petition namely that the definition of dedicated facilities would not cover on a consumer who is served by an express feeder is sought to be, for the first time, in the above petition and was not urged before the CGRF.

7. Having heard the learned Counsel for the parties and have given my anxious consideration to the rival contentions. The issue involved is as to whether the Respondent No. 1 can be said to be HT-1 non continuous consumer. It is the case of the Petitioner herein that the Respondent No. 1 has been connected on 33 KV with connected load of 3477 KW on account of the contract demand of 3000 KVA. The Respondent No. 1, according to the Petitioner, enjoys express feeder facility in as much as there is uninterrupted supply of electricity to the Respondent No. 1 without staggering holiday of the week. The Petitioner in support of its case had produced the tariff disclosing the power consumed by the Respondent No. 1 on Wednesday which is staggering holiday for MIDC, Nagpur. The said chart therefore, inter alia disclosing that the Respondent No. 1 had consumed the electricity on the said day also, which is a staggering holiday. The said fact that the Respondent No. 1 had enjoyed the power on the staggering holiday is a pointer to the fact that the Respondent No. 1 was consumer served by an express feeder.

8. Now coming to the order of CGRF, it is pertinent to note that the CGRF has virtually imported the definition of "Dedicated Distribution Facilities" appearing in the MERC Regulation, 2005 and applied it to the term express feeder. Reading of the said definition discloses that DDF means such facilities, including service line forming part of the distribution system of the distribution licences which are clearly solely dedicated to the supply of electricity to a single consumer or a group of consumer on the same premises or contiguous premises, obviously, as the definition itself discloses that includes a single consumer or a group of consumers on the same premises or contiguous premises. Though the said definition strictly cannot be made applicable to the term express feeder, assuming that the same is to be applied still the Respondent No. 1 does not qualify to be a non express feeder consumer only on the ground that there is one more consumer getting supply from the consumer feeder and his premises is not a contiguous premises, since the definition takes within its sweep a group of consumers on the same premises or contiguous premises.

9. In my view, therefore, the CGRF has erred in applying the definition of the dedicated distribution facilities whilst considering the term "express feeder" so as to come to a conclusion that the Petitioner is a non express feeder consumer on

account of the fact that there is another consumer also availing of power on the same feeder. The learned Counsel appearing for the Petitioner drew my attention to the tariff order dated 12.09.2008, where the modality for being re-classified as non express feeder and non continuous HT-I express feeder has been prescribed hence once a consumer is a "HT-I Consumer Continuous" by enjoying the express feeder supply, unless the modality mentioned in the tariff order issued from time to time is followed there cannot be a connection from HT-I due to HT non continuous consumer. Admittedly, in the instant case, as mentioned herein above the Respondent No. 1 has filed the application for conversion to HT-I non continuous on 30.03.2009. The said application being not within the time as prescribed by Regulation, 2005, the same has been taken by the Petitioner.

10. It is significant to note that though CGRF has after applying the definition of distribution facilities to the term express feeder and after issuing the directions as contained in the first order dated 10.03.2010, has thereafter issued a corrigendum whereby the directions as contained in the original order dated 20.03.2009 are modified to the extent that the Petitioner has been directed to revise bills from 30.03.2009 which appears to be on the basis that the Respondent No. 1 had filed an application purportedly for change of classification on the said date. In so far as the corrigendum is concerned, in the context of the present petition it seems that the CGRF seemed to have a doubt as regards the application of the definition of Dedicated Distribution Facilities and also as regards whether the Respondent No. 1 can be classified as a non express feeder. It is possible, in view of the said doubt, that corrigendum has been issued to the CGRF directing the Petitioner to revise bills from 30.03.2009.

11. Be that as it may, in my view, in the light of what has been stated herein above the directions of the CGRF as contained in the impugned order dated 10.03.2010 and the order dated 23.06.2010 cannot be sustained. The said order is therefore, quashed and set aside. However, it is made clear that as and when occasion arises, Respondent No. 1 would be entitled to file an application for conversion to "HT-I Non Continuous" and if such an application is made, the same would be considered by the Petitioner in accordance with the rules and regulations.

12. The petition is allowed. Rule is accordingly made absolute with no order as to costs.

In view of above Civil Application No. 50/2011, does not survive and disposed of as such.