



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

WRIT PETITION NBO.988 OF 2011.

PETITIONER: Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), (through its Executive Engineer), O & M Division, Malkapur.

...VERSUS...

RESPONDENTS: 1. Consumer Grievance Redressal Forum Amravati Zone, Akola - "Vidyut Bhavan", Ratanlal Plots, Akola - 444 001.
2. Shri Domaji s/o Samji Patel, Aged Major, Occu: Business, Resident of Shri Umiya Saw Mill (Nimgaon Phata), Mukkam Post Nimgaon, Tq. Nandura, Distt. Buldhana - 443404.

Mr.S.V.Purohit, Advocate for the petitioner.

Mr.P.S.Khubalkar, Advocate for respondent no.2.

CORAM : R.M.SAVANT, J.

DATED : 7th July, 2011.

ORAL JUDGMENT :

1. Rule, with the consent of the parties, made returnable forthwith and heard.

2. This petition takes exception to the order dated 6/12/2010 passed by the Consumer Grievance Redressal Forum

(CGRF), Amravati Zone, Akola, by which order the Consumer Forum has directed the petitioner to provide the supply to the three connections of the respondent herein from Nimgaon Gaothan Feeder instead from existing agriculture Feeder within one month from the date of the order.

3. A few facts, which are necessary to be cited for the adjudication of the above petition are stated thus -

The respondent no.2 is the consumer of the petitioner – Company and running a Saw Mill. The respondent is having three connections at Nimgaon, and Industrial connection is provided for purpose of the Saw Mill. The respondent is getting supply from Agriculture Feeder since inception, the Gaothan Feeder came to be commissioned on 23/9/2009. Since there is load shedding and low voltage supply, the respondent was desirous of getting the supply from the Gaothan Feeder and accordingly made oral as well as written requests to the officials of the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) to provide supply from the Gaothan Feeder. It is the case of the respondent that he is entitled to get the supply under what is known as “Gaothan Separation Feeder Scheme”.

4. The respondent no.2 with the said grievance that he

should be provided with the Gaothan Separation Feeder Scheme approached IGR Cell Buldhana but on getting no relief approached the CGRF, Amravati Zone, Akola. The relief sought by the respondent was that the CGRF should order the petitioner i.e. the MSEDCL, Malkapur to provide supply from the Gaothan Feeder instead of the from agriculture Feeder and to award compensation of Rs.1,80,000/- for financial loss and mental pain.

5. To the application filed by the respondent no.2 before the CGRF, the petitioner herein filed its reply after the receiving notice issued by the Forum. The petitioner stated that the Gaothan Feeder Separation Scheme (GFSS) has been implemented by the petitioner, the object being that the people residing in the villages should get supply in the same manner as the supply which is provided to Urban Consumers. It was further stated in the said reply that the location of the three connections is about 1 km. away from Nimgaon village and therefore, it was not possible to include the said connections in the Scheme and therefore they are not connected to the Gaothan Feeder. It was further stated that in order to provide supply from Gaothan Feeder to the respondent no.2, it is necessary to lay LT electric line but as there was no provision for the same in the Scheme, it was not possible to provide supply from Gaothan Feeder. It was lastly stated that if the consumer consents and spends for

erection of lines, it would be possible to get the estimate sanctioned and supply could be provided from the Gaothan Feeder.

6. The CGRF considered the said grievance of the respondent no.2 and relying upon the contradictions in the statement purportedly made on behalf of the Officer of the petitioner, namely; to the effect that if the consumer is ready to incur the expenditure for erection of electric lines, the supply would be provided from Gaothan Feeder instead of Agriculture Feeder, which the CGRF found to be contrary to the case of the petitioner that the premises in questions were outside the Gaothan and therefore could not be supplied to the Gaothan Feeder. From the said statement of the Officer of the petitioner, CGRF inferred that under the CGRF Scheme there is provision to provide supply from Gaothan Feeder to the Industry situated outside the Gaothan area.

7. In so far as the issue whether the respondent no.2 was situated within the Gaothan area, the CGRF referred to the Certificate issued by the Deputy Superintendent of Land Records, Nandura. It has been stated in the said certificate that the premises situated in Gat No.831 were outside the Gaothan area. The CGRF on the said basis concluded that if the purpose of the Scheme is that the consumer of the Rural area (other than agriculture connection)

should get supply as consumers of Urban area are getting, with similar load shedding, the supply from Gaothan Feeder to the Respondent no.2 will have to be provided at the cost of MSEDCL and the consumer cannot be required to spend for infrastructure as submitted by the Executive Engineer of the petitioner.

8. It is required to be noted that the above view of the CGRF was a majority view of the two members whereas the Single Member deferred from the said view and held that the respondent though can be provided supply from Gaothan Feeder would have to bear the expenses for erection of the LT electric line. The dissenting member relied upon Regulation 3.3.4 of the Regulations in question.

9. Heard the learned counsel for the parties.

10. Arguments/submissions were made by the learned counsel for the parties in support and in opposition to the impugned order dated 5/12/2010. It was contended on behalf of the petitioner that though the respondent no.2 can be provided a dedicated Feeder service from the Gaothan Feeder, the respondent would have to bear the expenses for the same as the costs of laying the infrastructure in terms of the Regulations have to be borne by the consumer.

11. Per contra, it is submitted by the learned counsel appearing for the respondent no.2 that since the respondent no.2 is situated outside the Gaothan, he would be entitled to the CGRF Scheme, as supply is from the same Feeder and no separate line is required to be laid for the benefit of the respondent. The learned Counsel relied upon the proviso to Regulation 3.3.4 of the said Regulation in support of his said submission. The said Regulation 3.3.4 and the provisos are reproduced hereunder.

3.3.4. Where the provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or Regulation 3.3.3 above, for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses reasonably incurred non such works as the load applied for bears to the incremental capacity that will be created by augmentation of the distribution system:

Provided that, where the load applied for does not exceed 25 per cent of the capacity that will be created by augmentation of the distribution system, the Distribution Licensee shall not be entitled to recover any expenses under this Regulation 3.3.4 :

Provided further that, any dispute with regard to the need for and extent of augmentation of the distribution system under this Regulation 3.3.4 shall

be determined in accordance with the procedure set out in the Consumer Grievance Redressal Regulations.

12. In my view, considering the material on record namely; the certificate of the District Inspector of land records it is clear that the Saw Mill of the respondent no.2 is situated outside the Gaothan. It is required to be noted that the Gaothan Feeder Supply Scheme (GFSS) has been commissioned only with a view to mitigate the grievance of the villagers, as far as the supply of electricity is concerned, so as to bring them on par with the consumers in the Urban area, any supply from the said Gaothan Feeder to the respondent would, therefore, require a dedicated line to be installed for which expenditure in terms of the regulation, which has been quoted in the dissenting order, has to be borne by the respondent. In my view, in the facts of the present case wherein supply is to be provided for a saw mill the reliance placed by the learned Counsel for the respondent no.2 on the proviso to the said Regulation 3.3.4 is misplaced.

13. The learned counsel for the petitioner submits that the issue as to whether the Distribution Company can recover the expenses in so far as the consumers of the kind, to which the respondent herein belongs, is adjudged before the Apex Court and

the payment therefore, even if made by the respondent for the said dedicated supply, would be contingent upon the decision of the Apex Court.

14. In the light of the above, the impugned order dated 6/12/2010 would have to be set aside and is accordingly set aside. However, it is made clear that if the respondent no.2 desires to have a dedicated supply to his Saw Mill, which is outside the Gaothan, the same would be provided, as has been stated on behalf of the petitioner – Company before the CGRF, at the costs of the respondent. In the event, the said cost of the infrastructure is paid by the respondent, needless to say that the same would be subject to the outcome of the proceedings in the Apex Court.

Rule is accordingly disposed of in the above terms.

JUDGE

chute