

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 27 OF 2019

Dated : 09.01.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

**1. MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LTD.**

5th Floor, Plot No. G-9,
Station Road, Prakashgad,
Bandra (East), Mumbai – 400 051
Through its Chief Engineer, Commercial.

**2. SUPERINTENDING ENGINEER,
MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LTD.**

Vidyut Bhavan, Annabhau Sathe Chowk,
Nanded Circle Office, Nanded – 431 602

... Appellant(s)

Versus

**1. MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION**

World Trade Centre, Centre No.1
13th Floor, Cuffe Parade,
Colaba, Mumbai – 400 005
Through its Secretary

2. M/S JAI CORP LIMITED (JCL),

11 & 12 B, Mittal Towers,
B Wing, Nariman Point,
Mumbai – 400021

Through its Vice President (Com)

... Respondent(s)

Counsel for the Appellant(s) : Samir Malik
Rahul Sinha
Nikita Choukse
Shaida Das
Akash Lamba
Himani Yadav

Counsel for the Respondent(s) : --

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. This appeal is directed against the order dated 26.03.2018 (hereinafter referred to as “the impugned order”) passed by the 1st respondent *Maharashtra Electricity Regulatory Commission* (hereinafter referred to as “the Commission”) whereby the Commission has held the appellant *Maharashtra State Electricity Distribution Company Limited* (in short “MSEDCL”) liable to pay consequential interest also for the period of delay in complying with the order dated 06.11.2015 passed by the consumer *Grievance Redressal Forum* (in short “CGRF”) either through adjustment in

the energy bills of the 2nd respondent *M/s Jai Corp Limited* (in short “JCL”) or directly to the company.

2. It appears that certain dispute has arisen between the appellant and 2nd respondent with respect to the refund of amounts pertaining to difference in rates between continuous and non-continuous tariff since June, 2008. Accordingly, the 2nd respondent had approached CGRF by way of case No.1/2015 which was disposed off by the Forum vide judgment dated 06.11.2015 holding the 2nd respondent entitled to refund of the said rate difference between continuous and non-continuous tariff since June, 2008 in the month in which appellant MSEDCL had not provided continuous supply, but without interest.

3. Since the appellant MSEDCL did not refund the rate difference amount to the 2nd respondent in compliance with the said judgment dated 06.11.2015 of CGRF despite various letters as well as reminders, the 2nd respondent approached the Commission by way of a petition purportedly under Section 142 of Electricity Act, 2003 seeking compliance of the said judgment dated 06.11.2015 of CGRF by the appellant. It was contended in the petition that in pursuance of the CGRF judgment, the appellant was required to charge 2nd

respondent at non-continuous power supply tariff and accordingly refund and / or adjust the sum of Rs.3,46,14,313/- in its electricity bills in 12 installments but the appellant has failed to do so. Following prayers were made in the petition by the 2nd respondent: -

“1) “the Respondent be directed to pay sum of Rs.3,46,14,313 along with 18% p.a. interest from the date of the order i.e. 6th November 2015 i.e. Rs.39,97,953/- aggregating to total sum of Rs.3,86,12,266/- till payment and/or realization as more particularly mentioned in the Particulars of Claim being Exhibit-“P”;

2) In the alternative, the Respondent be directed adjust sum of Rs.3,46,14,313 along with 18% p.a. interest from the date of the order i.e. 6th November 2015 i.e. Rs.39,97,953/- aggregating to Rs.3,86,12,266/- till payment and or realization as more particularly mentioned in the Particulars of Claim being Exhibit “P”, against the electricity bill in 12 installments;

3) pending the hearing and final disposal, the Hon'ble Commission may be pleased to direct the Respondent to give credit to the Petitioner in monthly electricity bill; and/or

4) cost;

5) such other and further reliefs.”

4. The petition was disposed off by the Commission vide order dated 14.02.2017 upon recording the submission on behalf of the appellant that it will be refunding the due amount to 2nd respondent in installments by adjustment in its ensuing energy bills in compliance of the CGRF judgment. The operating portion of the order is extracted hereinbelow: -

“8. However, in view of MSEDCL’s submission at the hearing and on affidavit that it will be refunding the amount due to JCL in installments by adjustment in its ensuing energy bills in compliance of the CGRF, Nanded Zone’s Order, and its intimation dated 15 November, 2016 to JCL, nothing survives in the matter. Considering the circumstances as explained by

MSEDCL, the Commission is not inclined to invoke the penal provisions of the EA, 2003 against it.”

5. What is noticeable is that even though the 2nd respondent has claimed interest also at the rate of 18% per annum on the refund amount, nothing was said in that regard by the Commission in the said order dated 14.02.2017.

6. Thereafter the 2nd respondent approached the Commission again by way of a review petition bearing case No.109/2017 seeking review of the order dated 14.02.2017 in so far as it was silent on the prayer of 2nd respondent for payment of interest on account of delay in refunding the amount on the part of the appellant. The review petition has been decided by the Commission vide impugned order dated 26.03.2018 holding the appellant liable to pay consequential interest also on the refund amount for the period of delay in complying with the Judgment of CGRF. According to the Commission, non-consideration of prayer of 2nd respondent regarding interest on the refund amount for the period of delay in the previous order dated 14.02.2017 was an omission which warranted review of that order to that extent.

7. Aggrieved by the said order dated 26.03.2018 of the Commission, the appellant is before us in this appeal.

8. We may note that there was no representation on behalf of the respondents in this appeal before us on several dates and accordingly we heard the learned counsel for the appellant. The hearing of the appeal concluded *ex-parte* on 12.11.2024 when the judgment was reserved.

9. We have perused the judgment dated 06.11.2015 passed by CGRF as well as orders dated 14.02.2017 and 26.03.2018 passed by the Commission. We have also considered the written submissions filed on behalf of the appellant.

10. At the outset, we may note that the petition filed by the 2nd respondent before the Commission (which has been decided vide order dated 14.02.2017) was not a petition for resolution of dispute under Section 86 of the Electricity Act, 2003, but was a petition under Section 142 of the Act seeking compliance of the order dated 06.11.2015 passed by CGRF against the appellant. We find it apposite to refer to the operating portion of the said judgment dated 06.11.2015 passed by CGRF and the same is quoted hereinbelow: -

“1) The grievance / complaint of the applicant in ‘A’ form is partly allowed.

2) MSEDCL is directed to verify that the consumer had DIC Certificate as continuous process industry issued by the Directorate of Industries, Government of Maharashtra during those billing months under consideration.

3) The applicant is entitled for refund of rate difference without interest between Continuous to Non-Continuous tariff (HT-I-C to HT-I-N) since June-2008 in the month in which MSEDCL have not supplied continuous supply.

4) Rate difference should be adjusted by giving credit in monthly electricity bill in 12 instalments.

5) MSEDCL is directed to comply above order within 2 (Two) months from the date of this order & compliance report shall be submitted to the forum immediately.

6) If the applicant is not agree with the judgment given by the forum, then the applicant can file his representation within 60

days from the date of judgment in 'B' form before the Ombudsman on the following address. Form 'B' is available free of cost in this office."

(Emphasis supplied)

11. Manifestly, the CGRF did not find 2nd respondent entitled to interest on the refund amount and therefore it specifically stated that the 2nd respondent is entitled for refund of rate difference without interest. Therefore, it was not open for the Commission to go beyond the order passed by CGRF in holding 2nd respondent entitled to interest also on the refund amount.

12. Section 142 of the Act can be invoked to seek compliance of the directions passed by appropriate Commission / forum and it empowers the Central / State Electricity Commission to impose penalty also upon the defaulting party in addition to seeking compliance of the directions / orders. Thus, the scope of proceedings under Section 142 of the Act is very limited i.e. to enforce or seek compliance from the defaulting party of the orders / directions passed by appropriate Commission / forum. It is a settled principle of law that while exercising powers under Section 142 of the Act, the Commission cannot travel beyond the four corners of the order, of which

compliance is sought, and read / add into the order what is not expressly provided in the order. While exercising powers under Section 142, the Commission does not function as an original or appellate court for determination of disputes between the parties. In these proceedings, the Commission is only concerned with the issue as to whether there has been any non-compliance or disobedience of the orders passed by Commission/ forum and if so, compel the erring party to comply/obey the order in letter and spirit.

13. As already noted hereinabove, the 2nd respondent had approached the Commission by way of petition No.89 of 2016 seeking compliance of the judgment dated 06.11.2015 passed by CGRF, which had not allowed interest on the refund amount to the 2nd respondent. In that view of the matter, the initial order dated 14.02.2017 passed by the Commission on the subject petition was perfect and justified in so far as it did not consider the prayer of 2nd respondent for interest on the refund amount. However, it is evident that the Commission committed gross error in allowing the review petition filed by the 2nd respondent vide impugned order dated 26.03.2018 thereby holding the appellant liable to pay consequential interest also to the 2nd respondent on the refund amount. While doing so, the Commission has clearly gone beyond the judgment dated 06.11.2015 passed by CGRF which had explicitly stated that

the 2nd respondent is entitled to refund without interest. Thus, the Commission appears to have taken over the role of appellate court / authority while exercising the powers under Section 142 of the Act, which is not permissible under law.

14. We may also note that in case, the 2nd respondent felt aggrieved by the order of CGRF in not granting interest on the refund amount, the proper course of action for it was to approach the Electricity Ombudsman in accordance with Regulation 17.2 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006, which is reproduced hereunder: -

“17.2 Any consumer, who is aggrieved by the non-redressal of his Grievance by the Forum, may make a representation for redressal of his Grievance to the Electricity Ombudsman within sixty (60) days from the date of the order of the Forum. Provided that the Electricity Ombudsman may entertain a representation after the expiry of the said period of sixty (60) days if he is satisfied that there was sufficient cause for not filing it within the said period.”

15. That having not been done, the 2nd respondent was precluded from claiming interest on the refund amount in the petition under Section 142 of the Electricity Act, 2003, filed before the 1st respondent Commission and the Commission also fell in error in granting interest on the refund amount to the 2nd respondent by way of impugned order dated 26.03.2018 passed in the review petition filed by the 2nd respondent.

16. For the aforesaid reasons, we do not find the impugned order of the Commission dated 26.03.2018 sustainable as the same is patently erroneous. The same is hereby set aside. Accordingly, the appeal stands allowed.

Pronounced in open court on this the 09th day of January, 2025

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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~~REPORTABLE / NON-REPORTABLE~~

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