

MAHARASTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.

KONKAN ZONE RATNAGIRI

Consumer Grievances Redressal Forum Ratnagiri

Consumer case No. – 25/2013

Date :- 31.07.2013

**M/s.Ultratech Cement Ltd.
Bhagwati Bandar ,
Tal . & Dist-Ratnagiri .**

}

Complainant

V/S

**Superintending Engineer
Maharashtra State Elec.Dist.Co.Ltd.
Ratnagiri**

}

Opposite Party

Quorum of the Forum

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- 1) Mr. D. S. Jamkhedkar
Chairman**
- 2) Mr. V.B.Jagtap.
Secretary Member**

On behalf of consumer

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**Mr. V.R.Jadhav.
(Consumer Representative)**

On behalf of opposite party

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- 1) Mr.S.B.Wahane,
Superintending Engineer, Ratnagiri**
- 2) Mrs. Jyotsna Sonone,
Asst. Law Officer, Ratnagiri**

**Maharashtra State Electricity Regulatory Commission Consumer Grievance
Redressal Forum and Ombudsman Regulation 2003 Vide Clause No.8.2**

Being aggrieved by the order passed by I.G.R.C. Ratnagiri on 7th July 2013 the appellant Ultratech cement Company has come in appeal.

Facts of the case in brief are as follows.

- 1) Appellant Company is a cement Manufacturing Company having its factory at Zadgaon MIDC at Ratnagiri. The company imports the raw material named as 'clinker' from Jafarabad in the state of Gujarat by 'Sea-Route' This clinker is being unloaded at the jetty at Bhagwati Bandar which is about 10 kms away from the factory and then transported to the factory by road.
- 2) The company has taken separate electric connection bearing consumer No.210019006161 and was categorised as HT-I Industrial category since beginning. It is the grievance of the appellant that for the first time in 2012, the respondent all of a sudden changed the category to HT -II commercial and sent letter to that effect on 15.10.2012. The appellant raised the grievance to this change in category to various authorities of the respondent but without any result.
- 3) Then appellant received the letter from S.E.Ratnagiri asking appellant to pay Rs. 80,13,927/- under bill dated 15.01.2013. There after the appellant moved I.G.R.C.Ratnagiri for the redressal of the grievance, but the petition came to be rejected on 07.07.2013 and being dissatisfied with the order, the appellant has come in appeal.
- 4) A notice was sent to respondent Mahavitran and the Mahavitran has filed say and opposed the claim of the appellant. It was vehemently contended by Mahavitran that none of the activity carried out at Bhagwati Jetty by appellant could be branded as industrial activity and as such the change in category is correct and proper. It is contended that whatever activity the appellant is carrying at the jetty is of getting unloaded the raw material clinker and after getting it unloaded, to transport the same to the factory at Zadgaon MIDC. So by no stretch of imagination the said activity could be said to be industrial activity and thus the change in category is correct and proper.
- 5) With this background, the dismissal of the appeal has been prayed.
- 6) The arguments had to be heard on two occasions as the parties had raised various points supported by authorities laid down by various High courts. In addition written submissions have also been made by both the parties

7) It was vehemently argued on behalf of the appellant that clinker is being used for manufacturing cement at the factory unit and thus it is a raw material for manufacturing of cement. The clinker is being unloaded at Bhagwati Bandar Jetty and this is the only activity carried out at the Jetty which has to be treated as allied industrial activity connected with the main industrial activity carried out at Zadgaon factory unit Reliance has also been placed on various provisions under different Acts and the legal approach thereunder. With this background a submission has been made that action of Mahavitrans to change the category was without any basis and legal foundation and it be set aside.

The bill issued by Mahavitrans claiming arrears since 2008 has also been assailed on the ground that the same has been barred by limitation in view of the provision of Indian Limitation Act so also the Provision of section 56 of the Indian Electricity Act 2003.on these counts the setting aside of the bill and demand notice, has been prayed.

The Assistant Law Officer and the S.E.Ratnagiri Circle made submissions on behalf of the Mahavitrans. A submission has been made that no industrial activity is being carried out at Bhagwati Bandar Jetty and thus the claim of appellant to treat the connection in industrial category is baseless. A submission has also been made that the manufacturing unit i.e. factory of the appellant is located at Zadgaon MIDC which is about 10 kms away from Bhagwati Bandar Jetty and thus the activity at Bhagwati Bandar can never be treated as extended or allied industrial activity as submitted on behalf of appellant. So the change in category is well justified

So far as, demand notice is concerned, it is submitted that in view of the provisions of section 56 (2) of Electricity Act 2003, the bill is quite correct and proper and the demand of arrears is well within limitation. A hand was laid on two authorities of the cases decided by our own High Court to fortify the submission.

8) In view of the rival submissions following points arise for our consideration and we have given findings against each of them for the reasons given below.

No.	Points	Findings
1.	Whether the activity carried out at the Jetty by the appellant could be treated as Industrial activity.	No.
2.	Whether the demand bill is correct and proper.	Yes
3.	What order	As per final order

Reasons

9) Point No. 1 :-

The spot inspection report of the flying squad and the submissions made by the appellant makes it amply clear that a very restricted or limited activity of 'unloading the clinker' is being carried out at the jetty. For unloading this clinker electric supply has been used through the electric connection given to the appellant.

The word 'Industry' or 'Industrial' activity connotes the manufacturing process, production of goods or some sort of creation of finished goods with the help of raw material. Even if we take into consideration the dictionary meaning of the word 'Industry' or Industrial activity by no stretch of imagination it can be said that 'unloading of clinker or unloading of raw material is industrial activity.

The appellant has taken the assistance of the provisions of B.T. & A.L. Act 1948 and more specifically the provision of section 63(1)(A) of the Act to fortify the submission that, whatever is being done at the jetty is bonafide industrial use or purpose. The definition includes certain activities of construction building for godown, Research and development or canteen etc. but that does not mean that even running the canteen by the industry has to be treated as industrial purpose. The very word or sentence

“and shall include construction of industrial buildings used for the manufacturing process-----”

makes the distinction very clear, and it makes it abundantly clear that the activity carried out at Bhagwati Jetty can never be branded as industrial activity.

The appellant also relied on the provisions of factories Act and more specifically, the provision of section 2(14) of the said Act which is defining provision. If we go through the said provision we find that certain activities are covered under the word manufacturing process. but these activities do not cover the activity of unloading raw material and thus the said definition do not come to the rescue of the appellant.

so it cannot be said that the activity of unloading of clinker, a raw material used for manufacturing of cement is Industrial activity. Hence the point deserves to be answered in the negative and is answered accordingly in the negative.

10) Point No.2:-

The demand bill has been challenged in view of the provisions of section 56(2) of the Electricity Act 2003 and the provisions of Indian limitation Act.

It is needless to say that when there is a special Act making certain provisions then the provisions under the special Act prevails over the provisions of General Act. So in this case, as there is special Act i.e. Electricity Act 2003, it's provisions will prevail over General Act i.e. Indian limitation Act. So we will have to restrict ourselves to the provisions of Electricity Act 2003.

The relevant Provision is section 56 of the Electricity Act. The Provision of sub section -1 relates to the power or authority of the company to cut or disconnect the supply in case of non-payment of dues However the provisions of sub section -2 overrides the provisions of Indian Limitation Act and lays down the special limitation for the arrears or dues to be recovered. It runs as follows.

“Notwithstanding anything contained in any other Law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of electricity.”

If we go through the provision carefully, then we find that the two years period has got co-relation with the word ‘became first due’ so this two years period is to be counted from the date on which the amount became first due. It has to be said in the instant case that the amount became first due when the demand was raised for the first time i.e. when the bill was issued in 2012 covering the period from 2008.

It is the period of two years is to be counted from the date of issuing the bill and there before. Moreover if the subsequent bills are issued by showing earlier dues as arrears then again the right to recover gets fresh life.

In this respect we are fortified by the view taken by the Divisions Bench of our own High court in the case reported in the below mentioned case.

*“W.P.No.7015/208(M/s Rototex Polyster v/s Administrator,
Administration of Dadra and Nagar Haveli, Silvassa)”*

With this background, it must be said that the demand made is correct and the point deserves to be answered in the affirmative. Hence it is answered accordingly in the affirmative.

11) Point No.3 :-

In the result the present appeal fails and deserves rejection. Hence we proceed to pass following order.

Order

- 1) **Consumer's Grievance fails and hence rejected.**
- 2) **No order as to cost.**
- 3) **In case consumer desires to appeal against this order he should file his appeal to the following addresses.**

**Secretary,
OMBUDSMAN, Maharashtra State Electricity Regulatory Commission,
606/608, Keshava Building,
Bandra Kurla Complex,
Mumbai – 400 051.
Phone No.022 – 2659 2965.**

**D.S.Jamkhedkar
Chairman ,C.G.R.F.
Konkan Zone**

**V.B.Jagtap
Ex.Engineer,C.G.R.F.
Konkan Zone**

Date : 22.10.2013

Place : Ratnagiri