

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 18th OF AUGUST, 2022

WRIT APPEAL No. 861 of 2022

Between:-

1. MADHYA PRADESH PASHCHIM KSHETRA VIDYUT
VITRAN COMPANY LIMITED (MPPKVVCL)
THROUGH ITS MANAGING DIRECTOR GPH
COMPOUND POLOGROUND INDORE (MADHYA
PRADESH)

2. SUPERINTENDING ENGINEER (HT BILLING CELL)
MADHYA PRADESH PAKSHCIM KSHETRA VIDYUT
VITRAN COMPANY LIMITED (MPPKVVCL) GPH
COMPOUND, POLOGROUND, INDORE (MADHYA
PRADESH)

3. SUPERINTENDENT ENGINEER (O AND M)
KHARGONE CIRCLE, MADHYA PRADESH PAKSHCIM
KSHETRA VIDYUT VITRAN COMPANY LIMITED
(MPPKVVCL) GPH COMPOUND, POLOGROUND
(MADHYA PRADESH)

.....APPELLANTS

(BY SHRI ABHISHK TUGNAWAT, ADVOCATE)

AND

MARAL OVERSEAS LIMITED THROUGH ITS
OFFICIAL SIGNATORY MR. RAJKUMAR GITA S/O MR.
O.P. GITE 468-469 GOYAL NAGAR INDORE (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI SUMEET SAMVATSAR, ADVOCATE)

*This appeal coming on for hearing this day, **JUSTICE***

***VIVEK RUSIA** passed the following:*

O R D E R

The appellants/respondents have filed the present writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 being aggrieved by the interlocutory order dated 06.01.2022, whereby the objection regarding maintainability of the writ petition for want of alternative remedy has been rejected and the writ petition has been held to be maintainable.

02. Facts of the case in short are as under:-

2.1. The respondent/writ petitioner is a High Tension Consumer of the appellants which is governed under the provisions of the Indian Electricity Act, 2003 as well as M.P. Electricity Supply Code, 2013. Vide order dated 09.06.2020, the Superintending Engineer (O & M), M.P.P.K.V.V.CL., Khargone Circle under Clause 11.2 of M.P. Electricity Supply Code, 2013 granted the benefit of reduced CD from April 2020 to May 2020 because of the lockdown during COVID – 19 Pandemic.

2.2. Vide letter dated 01.07.2020, the Superintending Engineer, High Tension (Billing Cell), Indore has informed that on 12.06.2020 maximum consumption i.e. 8108 KVA was recorded which is in violation of point No.7 of a letter dated 13.05.2020.

After examining the matter, the Superintending Engineer, High Tension (Billing Cell), Indore has held that the writ petitioner was ineligible to get the benefit of reduced CD under clause 11.2 of the M.P. Electricity Supply Code, 2013 and recalled the order dated 26.05.2020. Being aggrieved by the aforesaid action, the writ petitioner has filed a writ petition before the Writ Court seeking the following reliefs:-

“7.1. It is, therefore, prayed that the present Petition may kindly be allowed, and appropriate Writ / Order or Direction may kindly be issued against Respondents as follows:

- a. for quashing the impugned letter No.MD/WZ/05HT Billing Cell/1645 dated 30.03.2021 (Annexure-P/13) in its entirety;
- b. for quashing letter No.289-2 dated 1st July 2020 (Annexure-P/9) to the extent of withdrawing reduced supply of electricity in a phased manner under Force Majeure clause, i.e. Clause No.11 of the Madhya Pradesh Electricity Supply Code, 2013;

7.2. Any other relief which this Hon'ble Court may deem appropriate.”

2.3 After issuance of notice in the writ petition, the appellants/respondents have filed a reply raising a preliminary objection about the maintainability of the writ petition for want of availability of alternative remedy before M.P. Electricity Consumer Grievance Redressal Forum established under Section 42(5) r/w MPERC (Establishment of Forum and Electricity Ombudsman for

Redressal of Grievance of the Consumer) (Revision-1) Regulations, 2009. It is further submitted that Clause 11.13 of the M.P. Electricity Supply Code, 2013 provides that in case of any dispute in meaning or scope or interpretation of the Code, the interpretation of the Commission i.e. MPERC shall be final and binding on all the concerned.

2.4. Vide impugned order learned Writ Court has decided the preliminary objection as a preliminary issue by holding that Clause 11.15 of the M.P. Electricity Supply Code, 2013, the High Court of Madhya Pradesh is having overall jurisdiction in respect of all the proceedings arising out of this Code or agreement made thereunder, hence the writ petition is maintainable before High Court.

Hence, the present writ appeal is before this Court.

03. Shri Tugnawat, learned counsel for the appellants / Company submits that the Writ Court has wrongly held that under Clause 11.15 of the M.P. Electricity Supply Code, 2013, this High Court is having exclusive jurisdiction to decide the controversy between the parties, whereas this Clause 11.15 defines the territorial jurisdiction of the High Court. It is further submitted by the learned counsel that the MPERC is a competent forum to resolve any dispute in respect of the meaning or scope or interpretation of the M.P. Electricity Supply Code, 2013 or the agreement.

04. *Per contra*, Shri Samvatsar, learned counsel for the

respondent / writ petitioner supported the impugned order by submitting that the writ petitioner has not only challenged the withdrawal of the entitlement of the petitioner to get the reduced CD under Clause of 11.3 of the M.P. Electricity Supply Code, 2013 i.e. Force Majeure as well as the authority of Superintending Engineer, High Tension (Billing) to recall the benefits already been granted and availed. Learned counsel has elaborated that when the competence of the authority is under challenge in the writ petition then the alternative remedy would not be a bar for the High Court for deciding the writ petition. In support of his contention, he has placed reliance upon a judgment delivered by the Apex Court in the case of *M/s Magadh Sugar & Energy Limited v/s The State of Bihar & Other reported in 2021 SCC OnLine SC 801*, in which the hon'ble Apex Court has held that the High Court can exercise its writ jurisdiction if the order of the authority is challenged for want of authority and jurisdiction, which is a pure question of law. Since the writ petitioner is assailing the authority of the Superintending Engineer, High Tension (Billing Cell) who has retrospectively held that the writ petitioner is not entitled to payment of default fixed charges for the month April, May and June 2020 due to COVID – 19 Pandemic under Force Majeure clause. Hence, the Writ Court has not committed any error of law while rejecting the preliminary objection about the maintainability of the writ petition.

05. We have heard learned counsel for the parties at length and

perused the record.

06. The writ petitioner is a High Tension consumer of the appellant No.1 / Company. According to the writ petitioner, the production in the factory was severely affected due to the nationwide lockdown imposed by the Central Government as well as by the State Government due to the COVID – 19 Pandemic and it was not possible for the writ petitioner to consume the minimum limit of electricity as per the agreement. Hence, the writ petitioner submitted an application invoking Force Majeure Clause 11 of M.P. Electricity Supply Code, 2013. After considering the representation and examining the reduction of CD, on 07.04.2020, 24.04.2020, 04.05.2020, 14.05.2020 and 24.05.2020 benefit was granted to the petitioner vide order dated 09.06.2020. Later on, it came to the notice of the High Tension Cell of appellants that in the fifth i.e. last slab from 24.05.2020 to 31.06.2020, the consumed KVA was 8108. Since the petitioner exceeded the reduced agreed demand of 7500 KVA, hence, a notice was issued to the writ petitioner seeking an explanation and after considering the reply, the benefit of reduced CD has been withdrawn and demand of Rs.1.512 crore has been made.

07. By way of the writ petition the respondent / writ petitioner has assailed the impugned order *inter alia* on the ground that only violation is the excess consumption of electricity during the last slab i.e. No.5 otherwise during the four slabs the consumption was as per the permissible limit, hence, such harsh action by way of

penalty is not permissible, meaning thereby, the writ petitioner is not disputing for payment of alleged excess consumption of 608 KVA. The challenge is that the entire benefit in respect of four slabs ought not to have been withdrawn and secondly the benefit of Clause 11 i.e. Force Majeure has rightly been given to the writ petitioner due to the prevailing circumstances at the relevant point of time due to COVID – 19 Pandemic.

08. Two issues emerge for adjudication between the parties *firstly* whether due to sole violation entire benefits are liable to be withdrawn, *secondly*, whether the writ petitioner was entitled to get the benefit of Clause 11 i.e. Force Majeure during COVID – the 19 Pandemic ? If the MPERC concludes that the writ petitioner is entitled to the benefits of reduced CD under the Force Majeure clause of the M.P. Electricity Supply Code, 2013 then MPERC itself can quash the impugned order as well as the action of Superintending Engineer.

09. Sub-section (5) of Section 42 of the Electricity Act, 2003 mandates that every distribution licensee shall establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the Commission. As per sub-section (6) any consumer who is aggrieved by non-redressal of his grievance under sub-section (5), make a representation for the redressal of grievance to an authority to be known as Ombudsman. Sub-sections (4), (5), (6) & (7) are reproduced below:-

“(4) Where the State Commission permits a consumer or class of consumers to receive a supply of electricity from

a person other than the distribution licensee of his area of supply, the such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section(5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.”

10. In exercise of the power conferred under Section 42 & 181, the State Government framed a regulation called “the Madhya Pradesh Electricity Regulatory Commission Establishment of Forum and Electricity Ombudsman for Redressal of Grievance of the Consumer) (Revision-1) Regulations, 2009”. Chapter 3 provides for the constitution of the Grievance Redressal Forum. Any person aggrieved by the order of the Forum may make representation to the Ombudsman appointed / designated by the Commission. Chapter 4 provides for the appointment / designation of Electricity Ombudsman.

11. Thereafter, in the exercise of the power conferred under Section 181(2)(t) read with Section 43(1), Section 181(2)(x) read with Section 44, Section 48(b), Section 50 and Section 56 of the

Electricity Act, 2003 (No.36 of 2003), Section 9(j) of Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 (No.4 of 2001) and all other powers enabling it in that behalf, the Madhya Pradesh Electricity Regulatory Commission had notified “**the Madhya Pradesh Electricity Supply Code, 2004**” on 16.04.2004 which was subsequently amended from time to time.

12. The petitioner has claimed reduction of CD under Clause 11.1 and 11.2 of Chapter 11 of M.P. Electricity Supply Code, 2013. The benefit has earlier been granted to the petitioner but by way of the impugned order, the same has been withdrawn. Clause 11.13 of the Madhya Pradesh Electricity Supply Code provides that in case of any dispute in meaning or scope or interpretation of the Code, the interpretation of the Commission shall be final and binding on all the concerned.

13. Clause 11.12 & 11.13 of the M.P. Electricity Supply Code, 2013 are reproduced below:-

“11.12. These conditions shall be read and construed as being subject, in all respects, to the provisions of the Electricity Act, 2003 (No 36 of 2003), the CEA (Measures relating to safety & electricity supply) Regulations, 2010 and the M.P. Vidyut Sudhar Adhiniyam, 2000 (No 4 of 2001) in force and as amended from time to time and the Rules made therein and to the provisions of any other law relating to the supply of electricity for the time being in force; and nothing contained in this Code shall abridge or prejudice the rights of the licensee and the consumer under any Central Act or State Act or Rules made thereunder.

11.13. In case of any dispute in meaning or scope or interpretation of this Code, the interpretation of the Commission shall be final and binding on all concerned.”

14. Clause 11.12 comes under Chapter XI i.e. Miscellaneous of the M.P. Electricity Supply Code, 2013 under which the writ petitioner claimed the benefit of reduced CD. Clause 11.13 provides that in case of any dispute in the meaning or scope or interpretation of this Code, the interpretation of the Commission shall be final and binding on all concerned. Clause 11.14 specifically provides that if any difficulty arises in giving effect to any of the provisions of this Code, the matter may be referred to the Commission (MPERC) who after consulting the parties, may pass any general or special order, which appears necessary or expedient, to remove the difficulty.

15. The learned Single Judge after placing reliance on Clause 11.15 has held that the writ petition is maintainable before the High Court. We are not agreeing with the aforesaid view taken by the learned Single Judge because Clause 11.15 is only in respect of the territorial jurisdiction of the High Court to entertain all the disputes arising out of the M.P. Electricity Supply Code, 2013 or the agreement made thereunder within the jurisdiction of the High Court. The expression 'all the proceedings arising out of the Code or agreement' means all the proceedings undertaken by the Electricity Regulatory Commission.

16. So far as the judgment passed by the Apex Court in the case of *Magadh Sugar & Energy Limited (supra)* is concerned, the issue of alternative remedy has been considered by the Apex Court and it has been held that the State Government does not have the

power to levy taxes on the sale of electricity to BSEB and it was not the case of the appellant that the respondent has miscalculated the duty and penalty imposed on it in these circumstances. It has been held that the High Court can exercise its writ jurisdiction if the order of authority is challenged for want of authority and jurisdiction which is a pure question of law. With utmost respect to the above verdict, the Madhya Pradesh Electricity Regulatory Commission is the competent forum and expert authority in the field to give correct interpretation of Clauses of M.P. Electricity Supply Code, 2013. The commission can examine the issue about the entitlement of the benefit of reduced supply to the petitioner and the act of the respondent withdrawing the said benefits. MPERC is a special authority constituted under the Indian Electricity Act as well as the M.P. Electricity Supply Code to decide the dispute between the consumer and the licensee / Company under the M.P. Electricity Supply Code 2013.

Hence, the impugned order dated 06.01.2022 is set aside. Consequently, the writ petition (W.P. No.9066 of 2021) stands dismissed. The writ appeal stands allowed, with no order as to cost.

(VIVEK RUSIA)
J U D G E

(AMAR NATH (KESHARWANI))
J U D G E

Ravi