COURT- 1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APL No. 89 OF 2019 & IA No. 424 OF 2019
APL No. 103 OF 2019 & IA No. 442 OF 2019 & IA No. 1691 OF 2019 & IA No. 1740 OF 2019 & IA No. 2032 OF 2019

Dated: 28th November, 2019

Present: Hon'ble Mrs. Justice Manjula Chellur,Chairperson
Hon'ble Mr. Ravindra Kumar Verma,Technical Member(Electricity)

In the matter of:

APL No. 89 OF 2019 & IA No. 424 OF 2019

M/s Bhadreshwar Vidyut Private Limited .... Appellant(s)

Versus

Maharashtra Electricity Regulatory Commission & Anr. .... Respondent(s)

Counsel for the Appellant(s) : Hemant Singh
Nishant Kumar
Tushar Srivastava
Ambuj Dixit
Jyotshna Khatri For App1

Counsel for the Respondent(s) : For Res1
Udit Gupta
Anup Jain For Res2

APL No. 103 OF 2019 & IA No. 442 OF 2019 & IA No. 1691 OF 2019 & IA No. 1740 OF 2019 & IA No. 2032 OF 2019

M/s Bhadreshwar Vidyut Private Limited .... Appellant(s)

Versus

Maharashtra Electricity Regulatory Commission & Anr. .... Respondent(s)

Counsel for the Appellant(s) : Hemant Singh
Nishant Kumar
Tushar Srivastava
Ambuj Dixit
Lakshyajit Singh Bagdwal
Shariq Ahmed
Jyotshna Khatri For App1

Counsel for the Respondent(s) : For Res1
Udit Gupta
Anup Jain For Res2

ORDER

Heard learned senior counsel Mr. Basava Prabhu S. Patil and counsel for the Respondent Discom.

It is noticed that as early as 19.03.2019 a direction was made against 2nd Respondent Discom not to take any coercive action till next date of hearing which order continued till date.

Subsequently, on 19th September, 2019 after noticing the deficit or incorrect statements in the bills raised, we passed the following order:

"Heard Appellant as well as Respondent Discom. The main grievance seems to be not extending prompt payment incentives to the captive consumers of Appellant captive generating plant. We have gone through the details of bills filed along with the application at page 80 bill for December 2018 pertaining to one M/s Supreme Industries Limited Unit-3. The bill indicates as under:-

BILL DATE	*01-01-2019*	*6,79,46,500.00*
DUE DATE	*15-01-2019*	
IF PAID UPTO	*07-01-2019*	*6,74,94,430.00*
IF PAID AFTER	*15-01-2019*	*6,85,40,970.00*

The details for arriving at figure 6,79,46,500.00 is at page 81 which includes principle arrears and interest on arrears and reads as under:-

Current Interest	*31/12/2018*	*0.00*
Principle Arrears		*2,22,44,721.08*
Interest Arrears		*0.00*
Total Bill (Rounded) Rs.		*6,79,46,500.00*
Delayed Payment Charges Rs.		*5,94,469.03*
Amount Payable After 15-01-2019		*68540970*

Amount Rounded to Nearest Rs. (10/-)

The contention of the Appellant is, if the principle arrears and the interest on the arrears not paid, the so called prompt payment incentive is not applicable to the Appellant but Respondent Discom strenuously contends that the said benefits granted so far as the total current bill of Rs. 4,57,01,777.32 is concerned.

We also note that at page 80 last receipt date and amount shown but it does not reflect whether prompt payment discount benefit was extended or not. Similarly at page 82 we see the last receipt date as the date much prior to the date indicated in the bill and the current bill was paid. However, we do not find prompt payment discount benefit being *extended. According to Respondent Discom as per the list furnished this consumer was not given such benefit but reasons would be placed on record.*

In the above circumstances, we direct the Respondent Discom to place on record how prompt payment discount benefit is reflected in the bills of the consumers with reference to 1 to 30 consumers of Appellant captive generating unit.

At page 81 we note that 5,94,469.03 was charged as delayed payment charges. According to Appellant this delayed payment charges is being charged every month in respect of principle arrears and interest on principle arrears which is the subject matter of dispute for which stay is granted.

We direct the Respondent Discom to clarify by way of affidavit this delayed payment charges whether it is with reference to amount shown as current or principle arrears, with advance copy.

List the IA for hearing on 03.10.2019."

In terms of Order dated 19.09.2019 Respondent Discom filed compliance reply on 01.10.2019 wherein from paragraph 6 onwards they undertook the future course of action, which is as under:

(iv) Future Course of Action:

"6. MSEDCL most respectfully submits that after the clarification issued by the Tribunal on the direction of "No Coercive" during the course of proceedings, MSEDCL would now follow the below mentioned billing methodology for next billing cycle onwards to avoid any billing related complications:

PRINCIPAL ARREARS:

i. *The Principal Arrears (CSS+ASS) would be reflected in a separate column under the head "Amount recoverable but pending in Court Litigation".*
ii. *Interest on the said amount would be calculated every month and would be reflected accordingly under the said head.*
iii. *The said amount would only be recoverable after further directions/Orders of this Tribunal or any other Competent Court of equivalent or higher jurisdiction.*

CURRENT CHARGES:

i. *Monthly bills will be raised as per the units consumed by consumer every month and would only include “Current Charges” as payable.*
ii. *“Prompt Payment Discount” would be calculated on the “Current Charges” only and would be reflected in the bills.*
iii. *All issues of DPC, Grant/Denial of “Prompt Payment Discount” shall be solely based on the “Current Charges” only.*

7. MSEDCL most respectfully submits that MSEDCL has acted in bonafide after understanding the “No Coercive” Order issued by this Tribunal to mean “No disconnection” in the specific facts and circumstances of the present case and its history. MSEDCL undertakes and further assures this Tribunal that it has acted and would further act in consonance with the directions issued by this Tribunal. Any alternative view/understanding of MSEDCL of the “No Coercive” Order issued by this Tribunal was made in bonafide and in good faith."

Later on, on 22.10.2019 when learned senior counsel Mr. Patil brought to our notice non-compliance of directions in the 19th September, 2019 order, we made the following order:

"Heard learned senior counsel Mr. Basava Prabhu S. Patil and counsel appearing for Respondent Discom. According to senior counsel though the prompt payment discount is being reflected in the revised bill filed today, the same is not properly either adjusted or is not refunded to the party from whom it was collected.

He further submits that under threat of disconnection certain amounts pertaining to arrears which is the subject matter of the stay order was paid therefore it was a payment under protest and the same has to be refunded or there must be clarification from Respondent's counsel if they have adjusted.

According to Respondent's counsel the revised bill answers most of the queries raised by the Appellant.

In the above circumstances, we direct the Appellant to file separate application for interim direction itemwise showing the amount which was already paid, which *they are not supposed to pay amount/benefit inspite of payment if not reflected/refunded in order to have proper understanding of the real dispute between the parties with advance copy within two weeks.*

The interim order directing Respondent not to take coercive steps is revived and continue till next date of hearing.

One week time is granted to file reply, if any, on the interim application to be filed in terms of above order.

List the IA for hearing on 21.11.2019."

In response to direction in the order dated 22.10.2019 an affidavit clarifying rather explaining the details of amounts wrongly reflected and collected by 2nd Respondent Discom came to be filed by way of application in IA No. 2032 of 2019 by the Appellant.

To this application No. 2032 of 2019 in Appeal No 103 of 2019 which is connected with other matters, 2nd Respondent/Discom filed response on 21.11.2019.

In the response filed on 21.11.2019, the 2nd respondent took up following contentions:

"*PERSON AGGRIEVED:*

(xviii) The Appellant has chosen to name 16 consumers of MSEDCL in its present application and has cited certain amounts without any proper calculations or on what account such refund is being claimed.

(xix) *These 16 consumers are not the CPP Users of the Appellant since FY 2018-2019. The Appellant has failed to provide any documentary evidence to substantiate as to how and under what authority the Appellant is representing these 16 consumers before this Tribunal.*

(xx) The issue of refund if any, is not being agitated by these 16 consumers who have all the remedy available to them under law more so in view of the provisions of Section 111 of the Electricity Act, 2003 in case they chose to avail such remedy.

(xxi) The Appellant without any legal basis has been filing IA's for directions on behalf of these 16 consumers of MSEDCL more so when these 16 Consumers are not even CPP User's of the Appellant.

(xxii) The dispute w.r.t. certain amounts allegedly illegally recovered by MSEDCL from these 16 consumers' needs to be dealt with by the first appropriate forum which till date is yet to be determined.

"NO COERCIVE" DOES NOT MEAN NOT TO TREAT CSS AND ASC AMOUNT AS ARREARS:

(xxiii) MSEDCL with utmost respect states that the Prayers made by the Appellant before the Ld. MERC right from the beginning of the litigation would clearly reveal that "No Coercive" Order issued by the Ld. MERC as well as this Tribunal never meant not to treat the CSS and ASC amount as Arrears as such amount was already reflected in the bills of consumers.

(xxiv) As understood by MSEDCL, "NO Coercive" Order meant not to disconnect electricity supply of the consumers who availed power from the Appellant and not to force the consumer of Appellant to pay the CSS and ASC amount until further Orders.

(xxv) However, the "No coercive" Order has to be understood in the proper context of the facts of the five (5) round of litigation between Parties. The prayers of the Appellant before the Ld. MERC itself reveals that CSS and ASC amount was already charged in the bills of consumers of the Appellant. It is in this context that the "No Coercive" Order was issued and carried forward till date. However no Order till date has stated that the CSS and ASC amount is bad in law. Hence, till such time the said amount has to be treated as Arrears.

(xxvi) MSEDCL most respectfully submits that it has abided by the "No Coercive" Order issued by the Ld. MERC and this Tribunal and has never disconnected supply of any consumer till date on account of CSS and ASC amount.

ISSUES RAISED IN I.A. NEEDS TO BE DECIDED BY THE CORRECT FORUM:

(xxvii) MSEDCL most respectfully submits that the issues regarding incorrect billing etc. which has been raised by the present Appellant needs' to be decided

by the "Appropriate Authority" which will have jurisdiction to decide the CPP status of the Appellant.

(xxviii) With utmost respect it is submitted that the present Appeal is only for one limited purpose i.e. for this Tribunal to decide the "Appropriate Authority" which will have jurisdiction to decide the CPP status of the Appellant.

(xxix) Till the time, this Tribunal does not decide the said issue, any billing issue as being raised by the Appellant cannot be decided to the detriment of MSEDCL that too in view of details which are not only unclear but also very cryptic.

(xx) MSEDCL submits, that any consumer who is aggrieved by alleged incorrect billing or over-recovery of amount by MSEDCL needs to file a fresh petition with all details and evidences before the appropriate authority for proper adjudication of such disputes."

This affidavit filed on 20/21.11.2019 clearly indicates what 2nd Respondent-Discom undertook by their compliance affidavit dated 01.10.2019 is given a go by, by taking up a new stand. In other words, it's nothing but stating and undertaking one thing, and in action doing another thing. According to us this amounts to defying the directions of this Bench apart from backing out from their undertaking dated 01.10.2019.

Under these circumstances, we are of the opinion that a Show Cause Notice must go to Mr. Sunil Deshpande, Chief Engineer (Commercial) who filed Affidavit dated 01.10.2019 totally ignoring the undertaking given in the previous affidavit as to why contempt should not be initiated against him. We direct the Registry to issue Show Cause Notice returnable by 18.12.2019 to Mr. Sunil Deshmukh Pandey, Chief Engineer why contempt proceedings should not be initiated against him.

List the IA for hearing on ***18.12.2019.*** Interim order, if any, shall continue till next date of hearing.

Ravindra Kumar Verma **Technical Member(Electricity)**	**Justice Manjula Chellur** **Chairperson**