

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 58 of 2011

In the matter of
Petition filed by The Bombay Dyeing & Mfg. Co. Ltd., Patalganga under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, seeking review of the Order dated 23.12.2010 in Case no. 114 of 2009.

Shri V. P. Raja, Chairman

The Bombay Dyeing & Manufacturing Co. Ltd.Petitioner

Vs

Maharashtra State Electricity Distribution Co. Ltd.Respondent

ORDER

Dated: 30th June, 2011

The Bombay Dyeing & Manufacturing Co. Ltd., the Petitioner, filed a Petition before the Commission on 9th February, 2011, under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 seeking Review of the Order dated 23rd December, 2010, passed by the Commission in Case No. 114 of 2009.

2. The Prayers made by the Petitioner, are as follows :

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1. *The Hon'ble Commission may keep our petition open, till we get the interim directions of Hon'ble high court vacated or otherwise.*
2. *The Hon'ble Commission may initiate Suo-moto proceedings against the opponent fabricating Hon'ble High Court's directions, while submitting to Hon'ble Commission, if the Hon'ble Commission finds it, necessary. ”*

3. The factual matrix of the matter as submitted by the Petitioner in the review Petition and the subsequent correspondence, are set out hereunder:
- a) The Petitioner is a HT Consumer (no. 031129011281) of the Respondent, who had earlier filed a Petition in Case no. 114 of 2009 dated 15th January 2010, before the Commission, against MSEDCL, alleging partial compliance of the Order dated 17th September 2009 passed by the CGRF, Kalyan Zone.
 - b) The matter in Case No. 114 of 2009 was heard by the Commission on three occasions, that is on 17th March, 2010, 31st March, 2010, and on 13th December, 2010. Thereafter, an order was passed by the Commission, on 23rd December, 2010, wherein the Petition was dismissed, in view of the MSEDCL's Writ Petition pending before the Hon'ble High Court of Bombay ("**High Court**").
 - c) The Petitioner has alleged that the Respondent's submission before the Commission vide its letter No. 1987/AND/CM/2010 dated 02/09/2010 stating "*...the Hon'ble Court was pleased to pass an order staying the effect, operation and implementation of the Order dated September 17, 2009, and directing the consumer to not adopt any coercive steps pursuant to the said order dated September 17, 2009*" was not fully correct. In support to this, the Petitioner has submitted a copy of the Court's Order dated 31st August, 2010.
 - d) The Petitioner submitted that the Hon'ble High Court was never pleased *to pass an order staying the effect operations, and implementation of the Forum's Order*, contrary to what has been claimed by the Respondent in its submission before the Commission, vide its letter dated 2nd September, 2010, and, on the other hand the Hon'ble High Court had only directed not to adopt any coercive steps, till the writ petition filed by the Respondent was heard for admission.
 - e) The Petitioner further alleged that the interim directions of the Hon'ble High Court were twisted and fabricated by the Respondent while making submissions before the Commission, and the Commission also did not find it necessary to ask for a copy of the Hon'ble High Court's directions from the Respondents.
 - f) The Petitioner submitted that 'the hearing of the Writ application of the Respondent for admission before Hon'ble High Court is overdue now and should take place very shortly. The Writ application of the Respondent would be either admitted or disallowed. But in any case the interim direction of the Hon'ble High Court shall stand vacated, at this time, unless such new directions are issued'.
 - g) The Petitioner submitted that it agreed with the Commission's view as mentioned in the order dated 23rd December 2010 in Case No. 114 of 2009, that 'at this stage neither would it be proper nor be judicially respectful to precipitate any relief as sought for by the Petitioner, in view of Hon'ble High Court's interim direction. But, at the same time, it should not necessarily mean that its Petition be dismissed either'. Therefore, it does not find any reason for the Commission to dismiss its complaint petition, categorically.
 - h) Subsequently, the Petitioner vide its letter dated 4th May, 2011, has submitted a copy of the Order dated 27th April, 2011, passed by Hon'ble Bombay High Court, the extract of which is set out hereunder:

- “ 1. The writ petition is already admitted on 12th October, 2010. Rule was granted on interim relief and ad-interim relief granted on 31st August, 2010 was continued.
2. The learned counsel for the petitioner submits that during the pendency of the petition, the petitioner has already adjusted the amount which respondent no.1 was entitled to recover from the petitioner under the impugned order. This amount, however, is always subject to the outcome of the petition. In these circumstances, there is no need to grant interim relief.”
4. During the admissibility hearing held on 16th May, 2011 before the Commission the Respondent submitted that it had not received a copy of the Petition. In response, the Petitioner submitted that it had already sent a copy of the Petition to the Respondent. As per the Commissions direction, the Petitioner once again served the copy of the petition to the Respondent. The hearing on admissibility was adjourned.
5. On the day of next hearing on 10th June, 2011, Shri S P Parkar appeared on behalf of the Petitioner while Advocate Shri Rahul Sinha alongwith Shri N. B. Wadekar and Shri G. A. Mali, appeared on behalf of the Respondent, MSEDCL. The Petitioner reiterated its submission. The Respondent refuted the Petitioner’s allegation that it had misrepresented the Order dated 31st Aug., 2010, passed by the Hon’ble High court, before the Commission, and, submitted that the present Petition does not fulfill the mandatory requirements of the Review Petition and therefore deserves to be dismissed.
6. Heard both the parties. Hon’ble High Court has passed the following orders:-

“Date : August 31,2010

P.C.:

1 The learned counsel for the 1st respondent seeks time. Stand over till 15th September 2010.

*2 Till the petition is heard for admission, **no coercive action shall be taken against the petitioner on the basis of the impugned order.**”*

{Emphasis supplied}

“Date : October 12,2010

P.C.:

1 Rule. Advocate on record for the first respondent waives service. Rule on interim relief is made returnable on 18th November 2010. Ad-interim relief granted on 31st August 2010 will continue to operate till the rule on interim relief is heard.”

“Dated : 27th April, 2011.

P.C.:

The writ petition is already admitted on 12th October, 2010. Rule was granted on interim relief and ad-interim relief granted on 31st August, 2010 was continued.

2. *The learned counsel for the petitioner submits that during the pendency of the petition, the petitioner has already adjusted the amount which respondent no.1 was entitled to recover from the petitioner under the impugned order. This amount, however, is always subject to the outcome of the petition. In these circumstances, there is no need to grant interim relief.*”

In view of the directions of the Hon’ble High Court, that “no coercive action shall be taken against the petitioner on the basis of the impugned order”, complaint of The Bombay Dyeing & Mfg. Co. Ltd., was dismissed by the Commission vide its Order dated 23rd December 2010. The said Commission’s Order states that “*because of the Opponent’s writ petition the matter is sub-judice before the Hon’ble High Court whose decision in the matter will be binding on both the parties, at this stage neither would it be proper nor be judicially respectful to precipitate any action as sought for by the Complainant*”. This latter reasoning does not change now. The fact is that the writ petition is still pending before the Hon’ble High Court.

Accordingly, the Commission is not inclined to grant the prayers of Petitioner.

In view of the above, the Petition stands dismissed.

Sd/-
(V. P. Raja)
Chairman