

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 1273 OF 2009

Maharashtra State Electricity Distribution Co. Ltd.).. Petitioner

Versus

Crystal Industries and another).. Respondents

Mr. Firoz Palkhiwala i/b DSK Legal for the Petitioner.

Mr. S.A. Ghaisas for Respondent No.1.

CORAM : SWATANTER KUMAR, C.J. AND

S.C. DHARMADHIKARI, J.

DATED : 17TH JULY 2009

P.C.

We have heard the learned Counsel appearing for the parties.

In the order dated 6th May 2009 passed by the Electricity Ombudsman, it has been recorded as under :-

“7. It is clear from the above that the Respondent MSEDCL is entitled to levy only HP based tariff until it completes installation of MD meters for all consumers in this category. The Respondent, by its letter dated 1st August, 2008, confirmed to the Commission, having completed 100% installation of meters and also apprised the Commission that it is going ahead with MD based TOD tariff to this category. No specific date is mentioned from which the Respondent would commence levy of MD based tariff. There appears nothing wrong in communicating Respondent’s decision to commence MD based tariff. In view of this, Appellant’s argument that the Commission has not yet allowed the Respondent to start MD base tariff for LTV industrial consumers has no substance.

8. As regards applicability of power factor penalty, the Commission, while disposing of clarifications sought by MSEDCL, ruled vide order dated 12th September, 2008 in Case No.44 of 2008 that :

“The Commission clarified that power factor penalty and incentive shall be applicable to only those consumers who have MD based tariff and are provided with meters to measure their power factor.”

2. The learned Counsel appearing for Respondent No.1 has not been able to demonstrate before us by reference to any cogent documents on record that the Petitioner has failed to complete 100% installation of meters which was a condition precedent to the Circular issued. It is further clear from the record that the Petitioner has agreed to refund the penalty and not to charge the penalty and they would be entitled to MD based TOD tariff. In these circumstances afore-noticed, Rule. The operation of the order dated 6th May 2009 to remain stayed, but the Petitioner will not be entitled to charge any penalty and, in fact, if penalty recovered, shall be refunded or adjusted towards further bills.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.