



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 WRIT PETITION NO. 4640 OF 2021

MAHARASHTRA ELECTRICITY DISTRIBUTION COMPANY LIMITED
AND ANOTHER
VERSUS
PANKAJ TRILOKCHAND PANDE

...

Mr. Anil S. Bajaj, Advocate for the Petitioners.

Mr. Sonkawde h/f. Mr. N. D. Sonavane, Advocate for Respondent.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 4th MARCH 2026

PC.:-

1. Heard learned Advocates for the respective parties.
2. By the present petition, the Petitioners are aggrieved by the order dated 11.11.2019, passed by the Electricity Ombudsman, Nagpur in Representation No.80 of 2019, whereby the representation filed by respondent came to be allowed.
3. Mr. A. S. Bajaj, learned Advocate for the Petitioners submits that the Respondent filed a complaint raising grievance before the Consumer Grievance Redressal Forum, Aurangabad (for short "CGRF") as regards to levy of LT-II-B tariffs in electricity bills of the month of December 2018, January, March and May 2019, as his consumption has been exceeded than the contract demand. The learned CGRF vide its order dated 27.08.2019 rejected the complaint of the Respondent and being aggrieved by the same, the Petitioner preferred a

representation before the Electricity Ombudsman, Nagpur and the Electricity Ombudsman vide its impugned order dated 11.11.2019 allowed the representation and directed that the Petitioner to revise the bills and issue the same as per LT-II-A category and to withdraw the penalty levied by it for exceeding the contract demand, DPC and interest levied.

4. He further submits that there is no dispute about the fact that for Respondent was previously issued a bill as per applicable commercial tariff i.e. LT-II-A and the load as per those tariff was sanctioned and, therefore, the moment, the Respondent exceeded of the use, the Petitioners are liable to issue bill as per LT-II-B tariff and the penalty thereon. He further submits that as per the mandate of MERC, the Petitioners have levied the charges as per the directions of the commission on the basis of actual drawn demand and once it was noticed that consumer exceeded three times the sanction load, the bill along with penalty to that effect needed to be issued.

5. He further submits that learned Electricity Ombudsman, Nagpur has wrongly interpreted the order dated 01.01.2019 passed by the MERC in case No.60 of 2018 in the matter between Essem Gas Pvt. Ltd. Vs. Maharashtra Electricity Distribution Company Ltd.. In fact, that order supports the case of the Petitioners.

6. He further relied upon the penalty clause by submitting that

the applicable tariff category mentioned in MERC Case No.195 of 2017 specifically provides demand-based tariff and action to recover penalty is applicable to LT-II-A consumers in which category, Respondent No.1 falls. He further submits that in case the consumer makes default and exceeds the contract demand then the consumer will be billed as per the levied charges for the demand in excess of contract demand with penalty of 150% and, therefore, he submits that the learned Electricity Ombudsman exceeded the jurisdiction by setting aside the bill of Respondent and directing to revise the bill accordingly.

7. Per contra, Mr. Sonkawde holding for Mr. N. D. Sonawane, learned Advocate for Respondent supports the order passed by the Electricity Ombudsman by submitting that once the load was sanctioned from LT-II-A category then even if the Petitioner exceeds the use, whatever tariff was applicable for LT-II-A would still be applicable and Respondent-Consumer would not be liable to pay as per the LT-II-B tariff. Therefore, he submits that the learned Electricity Ombudsman rightly allowed the representation.

8. He invited my attention to the findings recorded by the learned Electricity Ombudsman which are reproduced herein below:-

“In view of the above, I am of the opinion that the intention of the Commission is to levy penalty for exceeding contract demand to only those consumers who avails demand based tariff. Therefore importing this analogy of levying penalty to consumers not availing demand based tariff such as LT-II-A is not tenable at all.

It is further noted from the bills that the Respondent has automatically shifted the Appellant under LT-II-B tariff category, billed it and further levied penalty in the months in which the load has increased more than 20 kW by importing the analogy, which is highly incorrect. It is surprising to note that the Respondent has gone one step further and billed the Appellant under LT-II-A when the demand registered is less than 20 kW. This flip flop in tariff applicability is not permitted in view of the tariff order of the Commission as nothing of this sort is mentioned in the tariff order.”

9. He further submits that the use had not exceeded more than three times and he also invited my attention to page No.22 of the present petition and tried to interpret the clause of Penalty for Exceeding the Contract Demand. As per his interpretation, in case a consumer exceeds, his demand contract on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of Supply Code Regulations. He submits that the consumer had not exceeded the demand on more than three occasions in a calendar year, rather had exceeded only three times. He further stated that the use had exceeded only for the month of December 2018, January, March, May 2019. As the Respondent had not exceeded more than three times the demand in one calendar year, he is not liable to pay tariff as per LT-II-B, rather he is liable to pay only under previously sanctioned LT-II-A category. Therefore, Respondent was not liable to pay the amount.

10. He submits that the clarification on which, learned Advocate for the Petitioners relied, was subsequent to the penalty clause and,

therefore, such a clarification cannot be considered and therefore, he submits that the learned Electricity Ombudsman has rightly allowed the representation. Therefore, he submits that the order passed by the learned Electricity Ombudsman is legal and proper.

11. Having heard learned Advocates for the respective parties at length. There is no dispute about the fact that Respondent was in the category of LT-II-A and, therefore, as per clause of Penalty for Exceeding Contract Demand read with the clarification, if the consumer exceeds his contract demand, he will be billed at the applicable Demand Charge rate for the Demand actually recorded and also be charged on the additional amount @ 150% of the applicable Demand Charge (only for the demand in excess of the contract demand).

12. The penalty clause which is at page No.22 of the petition/paper-book, which reads as under.

“Penalty for exceeding Contract Demand

In case a consumer (availing Demand-based Tariff) exceeds his Contract Demand, he will be billed at the applicable Demand Charge rate for the Demand actually recorded, and also be charged an additional amount at the rate of 150% of the applicable Demand Charge (only for the Demand in excess of the Contract Demand).

Under these circumstances, the consumer shall not be liable for any other action under Section 126 of the EA, 2003, since the penal additional Demand Charge provides for the penalty that the consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three

occasions in a calendar year. the action to be taken would be governed by the provisions of the Supply Code Regulations.”

13. Further the tariff order dated 12.09.2018, which is at page No.97 reads as under:-

LT II: LT – Non-Residential or Commercial

LT II (A): 0 – 20 kW

Consumption Slab (kWh)	Fixed/Demand Charge (Rs. per month)	Wheeling Charge (Rs/kWh)	Energy Charge (Rs/kWh)
LT 11 (A) 0-20 kW			
(I) 0 to 200 units per month	350.00	1.30	6.00
(ii) Above 200 units per month (only balance consumption)	350.00	1.30	9.20

LT II (B): >20 kW and ≤50 kW and (C) >50 kW

Consumption Slab (kWh)	Fixed Demand Charge (Rs./kVA/month)	Wheeling Charge (Rs/kWh)	Energy Charge (Rs/kWh)
LT II (B) > 20 kW and ≤50 kW	350.00	1.30	9.30
LT II (C) > 50 KW		1.30	11.60
TOD Tariffs (in addition to above base Tariffs)			
2200 Hrs-0600 Hrs			-1.50
0600 Hrs-0900 Hrs & 1200 Hrs-1800 Hrs			0.00
0900 Hrs-1200 Hrs			0.80
1800 Hrs-2200 Hra			1.10

14. The Hon'ble Apex Court in the matter of *Kerala State Electricity Board & Ors. Vs Thomas Joseph Alias Thomas M. J. & Ors., reported in (2023) 11 SCC 700* held that once the load was sanctioned in a particular category and if the consumer exceeded the use as per the load sanctioned, then tariff with a penalty is required to be

imposed and pursuant thereto, the bill was issued as per clause which is mentioned above.

15. The penalty would be inflicted irrespective of the category of consumer i.e. LT-II-A or LT-II-B. Therefore, the learned Electricity Ombudsman mis-interpreted the clause. The Hon'ble Apex Court in the case of ***Kerala State Electricity Board (supra)*** has held in paragraph Nos.57 to 66, which read as under:-

“57. While dealing with the challenge to the High Court's order, this Court in Seetaram Rice Mill³, inter alia, examined the scope of Sections 126, 127 and 135, respectively, of the said Act against the backdrop of the scheme of the 2003 Act and summed up its conclusions as under: (Seetaram Rice Mill case, SCC p. 143, para 87)

“87.... 1. Wherever the consumer commits the breach of the terms of the agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be "in blame and under liability" within the ambit and scope of Section 126 of the 2003 Act.

2. The expression "unauthorised use of electricity means" as appearing in a Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the agreement.

3. In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126(2) is not appealable.

4. Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing officer in terms of Section 126(3) of the 2003 Act in exercise of its

jurisdiction under Article 226 of the Constitution of India.

5. The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25-7-2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the assessing officer relating to passing of an order of assessment and determining the factual controversy of the case.

6. The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the assessing authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law."

58. In our opinion, the first two conclusions quoted hereinabove completely support the appellant Board. The learned counsel appearing for the consumers and the Commission tried to distinguish Seetaram Rice Mill from the present case on the ground that there was a change in the classification/category which is not so in this case inasmuch as here the consumers remain commercial/industrial having LT connection and, therefore, there is no issue of unauthorised use within the meaning of Section 126 of the 2003 Act. We see no force in the submission that change of category would not attract Section 126 of the 2003 Act. In Seetaram Rice Mill³, it was contended that only cases of change of user would be covered under Section 126 of the 2003 Act. While rejecting such contention, this Court clarified that the Explanation to Section 126 is not exhaustive and any use of electricity which is not permissible and beyond the contract demand amounts to unauthorised use of electricity and the blame contemplated under Section 126 of the 2003 Act is not dependent on whether the overdrawal transgresses into another tariff category or not

59. We may quote the relevant paragraphs from Seetaram Rice Mill: (SCC pp. 120, 123, 127, 129-30, 134-37 & 143, paras 18, 22, 24, 37, 44, 50, 60-61, 67.71-72 & 87)

"18. It is true that fiscal and penal laws are normally construed strictly but this rule is not free of exceptions. In given situations, this Court may, even in relation to penal statutes, decide that any narrow and pedantic, literal and lexical construction may not be given effect to, as the law would have to be interpreted having regard to the subject-matter of the offence and the object that the law seeks to

achieve. The provisions of Section 126, read with Section 127 of the 2003 Act, in fact, become a code in themselves. Right from the initiation of the proceedings by conducting an inspection. to the right to file an appeal before the appellate authority, all matters are squarely covered under these provisions. It specifically provides the method of computation of the amount that a consumer would be liable to pay for excessive consumption of the electricity and for the manner of conducting assessment proceedings. In other words, Section 126 of the 2003 Act has a purpose to achieve i.e. to put an implied restriction on such unauthorised consumption of electricity.

22. The relevancy of objects and reasons for enacting an Act is a relevant consideration for the court while applying various principles of interpretation of statutes. Normally, the court would not go behind these objects and reasons of the Act. The discussion of a Standing Committee to a Bill may not be a very appropriate precept for tracing the legislative intent but in given circumstances, it may be of some use to notice some discussion on the legislative intent that is reflected in the substantive provisions of the Act itself. The Standing Committee on Energy, 2001, in its discussion said, 'the Committee feels that there is a need to provide safeguards to check the misuse of these powers by unscrupulous elements'. The provisions of Section 126 of the 2003 Act are self-explanatory, they are intended to cover situations other than the situations specifically covered under Section 135 of the 2003 Act. This would further be a reason for this Court to adopt an interpretation which would help in attaining the legislative intent.

24. Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act.

37. Wherever the assessing officer arrives at the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if such period cannot be ascertained, it shall be limited to a period of 12 months immediately preceding the date of inspection and the assessment shall be made at the

rate equal to twice the tariff applicable for the relevant category of service specified under these provisions. This computation has to be taken in terms of Sections 126(5), 126(6) and 127 of the 2003 Act. The complete procedure is provided under these sections. b Right from the initiation of the proceedings till preferring of an appeal against the final order of assessment and termination thereof, as such, it is a complete code in itself.

44. The unauthorised use of electricity in the manner as is undisputed on record clearly brings the respondent "under liability and in blame" within the ambit and scope of Section 126 of the 2003 Act. The blame is in relation to excess load while the liability is to pay on a different tariff for the period prescribed in law and in terms of an order of assessment passed by the assessing officer by the powers vested in him under the provisions of Section 126 of the 2003 Act.

50. In other words, the purpose sought to be achieved is to ensure stoppage of misuse/unauthorised use of the electricity as well as to ensure prevention of revenue loss. It is in this background that the scope of the expression "means" has to be construed. If we hold that the expression "means" is exhaustive and cases of unauthorised use of electricity are restricted to the ones stated under Explanation (b) of Section 126 alone, then it shall defeat the very purpose of the 2003 Act, inasmuch as the different cases of breach of the terms and conditions of the contract of supply, Regulations and the provisions of the 2003 Act would escape the liability sought to be imposed upon them by the legislature under the provisions of Section 126 of the 2003 Act. Thus, it will not be appropriate for the courts to adopt such an approach.

60. The expressions "means", "means and includes" and "does not include" are expressions of different connotation and significance. When the legislature has used a particular expression out of these three, it must be given its plain meaning while even keeping in mind that the use of other two expressions has not been favoured by the legislature. To put it simply, the legislature has favoured non-use of such expression as opposed to other specific expression. In the present case, the Explanation to Section 126 has used the word "means" in contradistinction to "does not include" and/or "means and includes". This would lead to one obvious result that even the legislature did not intend to completely restrict or limit the scope of this provision.

61. Unauthorised use of electricity cannot be restricted to the stated clauses under the Explanation but has to be given a wider

meaning so as to cover cases of violation of the terms and conditions of supply and the Regulations and provisions of the 2003 Act governing such supply. "Unauthorised use of electricity" itself is an expression which would, on its plain reading, take within its scope all the misuse of the electricity or even malpractices adopted while using electricity. It is difficult to restrict this expression and limit its application by the categories stated in the Explanation. It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the Regulations framed and the provisions of the 2003 Act.

64. Minimum energy charges are to be levied with reference to "contract demand" at the rate prescribed under the terms and conditions. These clauses of the agreement clearly show that the charges for consumption of electricity are directly relatable to the sanctioned/connected load and also the load consumed at a given point of time if it is in excess of the sanctioned/connected load. The respondent could consume electricity up to 110 kVA but if the connected load exceeded that higher limit, the category of the respondent itself could stand changed from "medium industry" to "large industry" which will be governed by a higher tariff.

65. Chapter VIII of the Conditions of Supply classifies the consumers into various categories and heads. The electricity could be provided for a domestic, LT industrial, LT/HT industrial, large industry, heavy industries and power intensive industries, etc. In terms of Regulation 80, the industry would fall under LT/HT category, if it relates to supply for industrial production with a contract demand of 22 kVA and above but below 110 KVA. However, it will become a "large industry" under Regulation 80(10) if it relates to supply of power to an industry with a contract demand of 110 kVA and above but below 25,000 kVA. Once the category stands changed because of excessive consumption of electricity, the tariff and other conditions would stand automatically changed. The licensee has a right to reclassify the consumer under Regulation 82 if it is found that a consumer has been classified in a particular category erroneously or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category, etc. The Conditions of Supply even place a specific prohibition on consumption of excessive electricity by a consumer.

66. Regulation 106 of the Conditions of Supply reads as under:

106. No consumer shall make use of power in excess of the approved contract demand or use power for a purpose other than the one for which agreement has been executed or shall

dishonestly abstract power from the licensee's system.”

16. If the consumer exceeds the limit, contrary to the sanctioned load, then the consumer is liable to pay as per the penalty clause. The contention of learned Advocate for Respondent that the penalty would be inflicted only if the consumer exceeds his contract demand on more than three occasions in a calendar year is not a proper interpretation of the penalty clause. The said clause only states that, if consumer exceeds the demand on more than three occasions in a calendar year, then the action taken would be governed by Supply Code Regulations. The clause nowhere states that the penalty would be inflicted only if consumer exceeds the demand on more than three occasions.

17. Considering the above, I find that the Electricity Ombudsman has acted contrary to the tariff issued by MERC. Therefore, I am inclined to allow the writ petition by setting aside the order dated 11.11.2019, passed by the Electricity Ombudsman, Nagpur in Representation No.80 of 2019.

18. Hence, the present petition is allowed.

19. The order dated 11.11.2019, passed by the Electricity Ombudsman, Nagpur in Representation No.80 of 2019 is hereby quashed and set aside.

(SIDDHESHWAR S. THOMBRE, J.)