**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2235 OF 2005

M/s Tatiya Industries, through
Proprietor Suresh Anandraj
Tatiya (Jain) .. Petitioner

Versus

M.S.E.B. Through Superintending
Engineer, Rural & Urban Sector,
M.S.E.B. Jalgaon and others .. Respondents

**WITH
WRIT PETITION NO. 2236 OF 2005**

M/s Poly Pack Industries, through
Proprietor Suresh Anandraj
Tatiya (Jain) .. Petitioner

Versus

M.S.E.B. Through Superintending
Engineer, Rural & Urban Sector,
M.S.E.B. Jalgaon and others .. Respondents

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Shri P. P. Chavan, Advocate for the Petitioners in both matters.
Shri H. M. Karwa, Advocate for Respondent Nos. 1 to 3 in both matters.

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.
DATE : 6TH MAY, 2015.**

PER COURT :

1] In both these petitions, the grievance of the petitioners is that the assessment bills issued to the petitioners are illegal and further seek direction that the respondent No.3 should prepare the said assessment bills as per the provisions of Sec. 126 of the new Act that is Electricity Act 2003.

2] Mr. Chavan, the learned counsel for petitioners states that, there was no theft of electricity on the part of petitioners in both these writ petitions. The criminal cases were also filed against the petitioners, wherein meters were referred to expert and the report of expert is that there is no tampering of the meters, as such very assessment bills are illegal and does not stand to any reason.

3] The learned counsel submits that, new Electricity Act 2003 came into force on 10.06.2003. The raid was conducted on the premises of petitioners on night intervening between 09.03.2004 and 10.03.2004. On the said date, the new Act had came into force, as such any assessment done under old Act is illegal and without authority. The learned counsel submits that, the alleged circular relied by the respondent is of no avail, as it is not in consonance with the statutory provisions. According to the learned counsel, even circular does not empower the respondents to assess the bills for one year. The respondents could not have issued assessment bills on account of alleged theft for more than six (6) months.

4] Mr. Karwa, the learned counsel for respondents submits that, Sec. 172 of the Electricity Act 2003 is a transitional provision and it lays down that the State Electricity Board constituted under the repealed laws shall be deemed to be the State Transmission Utility and licensee under the provisions of the new Act for a period of one year from the appointed date or such earlier date as the State Government may notify, and shall perform the duties and functions of the State Transmission Utility and a licensee in accordance with the provisions of the Electricity Act and rules and regulations made thereunder. The learned counsel further submits that, in view of Sec.50 of the Electricity Act, the State Commission can specify an Electricity Supply Code to provide for recovery of electricity charges, etc. The learned counsel submits that, Sec. 135 of the Act deals with theft of electricity, when it is case of theft of electricity. Sec. 126 of the Electricity Act will have no relevance. According to the learned counsel, the circular dated 29.06.2004 is self explanatory, which gives power to the respondents to assess twice the amount considering the theft for a period of preceding one year. The learned counsel relies on the judgment of the Apex Court in a case of **J. M. D. Alloys Ltd. Vs. Bihar State Electricity Board and others** reported in ***AIR 2003 SC 1354***.

5] We have considered the submissions canvassed by the learned counsel for respective parties.

6] The gamut of the dispute between the parties is as to whether the respondents would be entitled to calculate the charges payable for a period of one year or only for a period of six months as provided u/s 126 of the Electricity Act, 2003. The petitioners in the writ petitions have nowhere assailed the aspect of theft of electricity nor have challenged the mode of calculation of the amount. The bone of contention of the petitioners is that as per Section 126 of the Act of 2003, fresh assessment is required to be made. The provisional bill is issued considering the amount for a period of one year. The prayer clause (F) of the petition reads as under:-

> "F] By issuance of writ of mandamus or any other appropriate writ, respondent no.2 be directed to undertake fresh assessment, in accordance of Section 126 and Circular dated 4/3/2004 and petitioner be given a copy thereof immediately and the opportunity of hearing and restoration of power supply etc., while making final assessment."

7] The respondents are relying upon the circular and provisions of Section 172 of the Electricity Act, 2003, to contend that the same is a transitional provision and the State Electricity Board constituted under the repealed laws shall be deemed to be the State Transmission Utility and licensee under the provisions of the new Act for a period of one year from the appointed date or such earlier date as would be notified by the State Government.

8] There cannot be any dispute with the said contention. However, the *prima donna* question is, the provision to be made applicable while calculating the bill on account of theft of electricity. The new Act came into force from 10.6.2003. The raid was conducted on the premises of the petitioner on the night intervening between 9.3.2004 and 10.3.2004. On the said date, the new Act had already come into force. Naturally the provisions of the new Act would govern the parties. Section 135 deals with theft of electricity wherein on conviction, fine can be levied. The manner of fine is also laid down therein, so also under Section 135(2) the powers of search and seizure are spelt out. Section 136 of the said Act further deals with theft of electric lines and materials, the same will not be relevant in the present matter.

9] However, the said provision nowhere deals with computation of charges. Section 126 of the Act of 2003 deals with the assessment on account of unauthorized use of electricity. Sub-section (5) of Section 126 reads as under:-

> “If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of electricity was continuing for a period of three months

> immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place."

10] On perusal of the said provision, it is manifest that if the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthroised use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place. In the present case, the petitioners have nowhere challenged the aspect of unauthorized use of electricity. As such the contention of the petitioners that in the criminal case, the electric meter was sent for inspection and it was found intact cannot be considered. The fact of unauthorized use of electricity is not disputed in the present petitions. However, the circular dated 29.6.2004 relied upon by the respondents would be of no avail as the said circular nowhere lays down that the respondents would be entitled to compute and assess the electricity charges for a period of one year. On the contrary, the said circular also lays down that the power to grant compensation vests with the Special Court. The said provision is meant for Special Court and the said circular also gives powers to the authorities u/s 126(6) to compound the offences and compromise the matter.

11] In the light of above, the only provision which can be relied upon is Section 126(5). In view of the same, the assessment bill issued for a period of one year cannot be sustained. The same is quashed and set aside. The respondents shall issue fresh assessment bills to the petitioners in tune with Section 126(5) of the Act of 2003, which the petitioners would be liable to pay. Rule is made partly absolute accordingly. No order as to costs.

[A. I. S. CHEEMA, J.] **[S. V. GANGAPURWALA, J.]**

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