

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8313 OF 2014

Seraj N. Khan

.. Petitioner

vs.

Appellate Authority and anr.

.. Respondents

Mr. Harshad Sathe a/w. Mr. Saurabh Butala for the Petitioner.
Mr. Rishabh Agarwal i/b Trillegal for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 12 FEBRUARY, 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order/communication dated 23 June 2014, by which the Appellate Authority under Section 127 of the Electricity Act, 2003, has summarily rejected the petitioner's appeal on the ground that the same is barred by law of limitation.

3] Learned counsel for the petitioner, placed reliance upon the decision of the Division Bench of this Court in case of *Adani Power Maharashtra Limited vs. Superintending Engineer and anr.*¹, which lays down that the period of limitation must commence from the date on which the party gains knowledge of order. Further the

¹ 2010(4)Bom.C.R.842

learned counsel for the petitioner points out that before the impugned order/communication was made, the petitioner was not afforded an opportunity of hearing in the matter and accordingly, there is a breach of principles of natural justice.

4] The Appellate Authority, before it proceeds to hold that the appeal was barred by law of limitation, ought to have afforded an opportunity to the petitioner to satisfy the Appellate Authority that the same was in fact not barred. For this short reason, the impugned order /communication dated 23 June 2014 is liable to be set aside.

5] The Appellate Authority shall afford an opportunity of hearing to both the petitioner as well as respondent No.2 on the aforesaid issue and only thereafter decide the matter in accordance with law.

6] Parties to appear before the Appellate Authority on 2 March 2015 at 11.00 a.m alongwith an authenticated copy of this order, for the purposes of directions.

7] It is made clear that this Court has not gone into the merits of the matter and all issues/contentions of either parties are

specifically kept open.

8] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9] Learned counsel for the petitioner submits that 50% of the disputed amount has already been deposited by the petitioner before respondent No.2. In view of the same, there shall be an interim protection in favour of the petitioner upto 2 March 2015. On the said date, it shall be open to the petitioner to apply for continuation of this interim protection before the Appellate Authority. Needless to note that the Appellate Authority shall decide the same, again in accordance with law and uninfluenced by the circumstance that this Court has granted the interim protection upto the 2 March 2015.

(M. S. SONAK, J.)

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