

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9581 OF 2015

M/s. Orisis (Orisis) Infotech Pvt. Ltd.]
Through the Representative Mr. Jyoti Mehra.] ... Petitioner

Versus

The Appellate Authority, The Chief Officer]
(Electrical) PWD and Ors.] ... Respondents

Mr. Tushar Sonawane for Petitioner.
Mr. Rahul Sinha i/b DSK Legal for Respondent No.2.
Mr. A. R. Metkari, A.G.P., for Respondent No.3.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 01, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. In this petition, the challenge is to the order dated 03/08/2015 by which the appellate authority constituted under the Electricity Act, 2003 ('said Act') has rejected the Petitioner's appeal against order dated 20/03/2015 upon the following grounds :-

- (a) That the appeal was instituted beyond the prescribed period of 30 days as provided under Section 127 (1) of the said Act.
- (b) That 2 percent Court-fee has not been deposited with the State Government.

4. On the aspect of payment of Court-fee, the learned Counsel for Petitioner, on basis of instructions from the representative of the Petitioner, has made a statement that the same will be paid within a period of two weeks from today. Further, a statement is made by the learned Counsel for Petitioner that in the present case, there is compliance with the provisions contained in Section 127 (2) of the said Act and an amount equal to half of the assessed amount has already been deposited by the Petitioner with the licensee and documentary evidence of such deposit had also been enclosed along with the memo of appeal.

5. Insofar as the issue of limitation is concerned, it is the case of the Petitioner, set out in para VII of the memo of appeal that the appeal was instituted within the prescribed period of limitation. In para I of the memo of appeal, the Petitioner has made a categorical statement that the impugned order dated 20/03/2015 was received by them on 26/03/2015. Even the assessment order dated 20/03/2015 sets out that in case the Petitioner is not satisfied with the assessment order, the Petitioner may file appeal to the appellate authority under Section 127 of the said act '*within 30 days from the*

date of receipt of this order after depositing 50 percent amount of the final assessment order with this office.'

6. The order made in the present petition, does not take into consideration the contention of the Petitioner that they had received the assessment order dated 20/03/2015 only on 26/03/2015 and consequently, the appeal instituted by them on 24/04/2015 was within the prescribed period of limitation. On this short ground, the impugned order dated 03/08/2015 is required to be set aside and is hereby set aside.

7. The issue as to whether or not the Petitioner received the final assessment order on 26/03/2015 is kept open for determination by the appellate authority. The appellate authority is required to consider the issue of limitation, in the context of the case set out by the Petitioner in the memo of appeal, including in particular, their contention that the period of limitation commences from the date of receipt of the final assessment order and further that the final assessment order, in the present case, was received by them only on 26/03/2015.

8. The statement of the Petitioner that Court-fee will be deposited within a period of two weeks from today is accepted. The impugned order dated 03/08/2015 is set aside. The appeal instituted by the Petitioner before the appellate authority is restored. The appellate authority to decide the same in accordance with law and on

its own merits. The issue of limitation is also kept open for decision by the appellate authority.

9. It is made clear that this Court has not examined the merits of the matter and therefore all contentions of all parties are kept open for decision by the appellate authority.

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

11. The appellate authority shall dispose of the appeal as expeditiously as possible and in any case, within a period of three months from the date of production of authenticated copy of this order.

12. Parties to appear before the appellate authority on 19/10/2015 at 11.00 a.m. and produce the authenticated copy of this order.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.