

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5200 OF 2015

M/s. Niramaya Holistic Health

Services Pvt. Ltd.

.. Petitioner

Versus

The Electricity Inspector and others

.. Respondents

Ms. Deepa Pahuja, for the Petitioner.

Mrs. Anjali R. Shiledar-Baxi, for the Respondent No.2.

Ms. M. S. Bane, "B" Panel Counsel for the Respondent No.3.

CORAM : R.M. SAVANT, J.

DATE : 11th MARCH 2016

PC.

1. The above Writ Petition takes exception to two orders i.e. order dated 12.01.2015 passed by the Assessing Authority i.e. the Additional Executive Engineer as also the order dated 26.03.2015, by which order, the Appeal has been dismissed on two fold grounds, the same was not filed within 30 days and that the Appeal fees are not paid as per Section 127(1) of the Electricity Act, 2003. In so far as the order dated 12.01.2015 is concerned, the Additional Executive Engineer of MSEDCL, Kharghar Sub Division has refused to entertain the objections raised by the Petitioner on the ground that they have been filed beyond the period of

seven days of the provisional assessments being served on the Petitioner. The said provisional assessments were in respect of Consumer No.029470889851/1. The Petitioner is running a hospital on floors 1 to 6 in the building in question, and the the seventh floor is meant for the resident doctors. It seems that there was a old meter existing in the building in question. However, it is the case of the Petitioner that it has got installed three new meters and the connection is for commercial user. It seems that a visit was made by the officials of the MSEDCL. Pursuant to which a provisional assessment was forwarded to the Petitioner vide the said letter dated 17.12.2014. It seems that the said communication was received by the Petitioner on 19.12.2014 and thereafter the persons concerned with the hospital of the Petitioner were making visits to the office of the MSEDCL in respect of the said provisional assessment and seeking to clarify that they are not using the old meter which was in existence in the building. In so far as the visits are concerned, the same find mention in the letter of the MSEDCL dated 28.01.2015. In the process of having personal meetings with the officials of the MSEDCL that there was overlap of time in filing of the objections which were filed only on 05.01.2015. The said objections were not considered by the concerned authority i.e. the Respondent No.2 herein who by his letter dated 12.01.2015 communicated to the Petitioner that its objections cannot be

considered in view of the fact that they have been filed beyond seven days of the receipt of the provisional assessments.

2. Aggrieved by the said letter dated 12.01.2015 and the provisional assessments, the Petitioner filed an Appeal before the Electricity Inspector i.e. the Respondent No.1 herein. The Appellate Authority has rejected the Appeal by its order dated 26.03.2015 on the ground of non-compliance of Section 127(1) of the Electricity Act, 2003, in the matter of deposit of the Appeal fees and also on the ground that the Appeal was filed beyond 30 days. As indicated above, it is the said order which is taken exception to in the above Petition.

3. Heard the Learned Counsel for the parties. The Learned Counsel for the Petitioner Ms. Deepa Pahuja pointed out that the amount covered by the provisional assessment has been already deposited by the Petitioner with the MSEDCL under protest. Hence, in so far as the objection in respect of non deposit of Appeal fees is concerned, the same would not survive as the entire amount covered by the provisional assessment has been deposited. The Petitioner has also been paying the subsequent bills. In so far as the provisional assessment is concerned, as indicated above, some time was lost in the persons concerned with the Petitioner having personal meetings with the officials of the MSEDCL

resulting in the objections being filed beyond seven days of the provisional assessments being received. Since the Petitioner has now paid the entire amount in terms of the provisional assessments, albeit under protest, in my view, it would be just and proper to set aside both the orders i.e. the order dated 12.01.2015 passed by the Assessing Officer as well as the order dated 26.03.2015 passed by the Appellate Authority and remand the matter back to the Assessing Officer for considering the objections of the Petitioner in respect of the provisional assessment. Since the objections have already been filed, the Petitioner to file its objections to the provisional assessment within three weeks from date. The Assessing Officer would consider the said objections and also grant personal hearing if permissible and conclude the assessment within eight weeks from date. With the aforesaid directions the Writ Petition is disposed of.

[R.M. SAVANT, J]