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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5097 OF 2002**

**Yogesh Tukaram Shetty,**

Age Adult, Occ. Service, Manager, Shri  
Krishna Upahargriha, Bombay Agra Road,  
Thane.

**...Petitioner**

***Versus***

**1. The Maharashtra State Electricity  
Distribution Company Ltd.**

Having its Registered Office at Hongkong  
Bank Building, Mahatma Gandhi Road,  
Fort, Mumbai 400 001.

**2. The Chief Engineer,**

Maharashtra State Electricity Distribution  
Company Ltd., having its office at 7th  
Floor, MSEDCL Building, Wagle Estate,  
Opp. Passport Office, Thane.

**...Respondents**

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Mr. K.K. Malpathak, for the Petitioner.

Mrs. Anjali R. Shiledar – Baxi, for Respondent Nos. 1 and 2.

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**CORAM: VASANTI A. NAIK &  
RIYAZ I. CHAGLA, JJ.  
DATED: 31ST OCTOBER 2017.**

**ORAL JUDGMENT :- (Per Riyaz I. Chagla J.)**

1. The Petitioner has filed this Petition under Article 226 of  
the Constitution of India challenging the final assessed bill of

Rs.1,78,614.19 issued by Respondent No.4 and has sought a direction from this Court against Respondent No.1 to refund to the Petitioner the amount of Rs.1,78,614.19 alleged to be illegally recovered from the Petitioner and to pay the same to the Petitioner along with interest at 18% p.a. from the date of recovery till payment.

2. The Petitioner is running a hotel as manager in the name and style of Shrikrishna Upahargriha at Thane. It is the Petitioner's case that the Respondent No.1 had on 17th July 1999 checked the Petitioner's electricity meter in the hotel and had reported that the same was in working condition on On 2nd June 2000, the officers of Respondent No.1 carried out a spot inspection of the meter and found the meter to be in an OK condition. The meter box had thereafter been sealed on 3rd January 2001 by the officers of MSEB by affixing paper stickers. The Flying Squad of Respondent No.1 had again visited the hotel of the Petitioner on 18th July, 2001 and made inquiry in respect of the electricity meter and in respect of power consumed in the hotel. It was alleged by the Flying Squad that the meter was not in proper condition

and showing less consumption than the actual. The paper stickers which had been affixed to seal the meter were claimed by the Flaying Squad to be duplicate and claimed that this was a case of theft of the electricity. It is the Petitioner's case that no evidence of illegal abstraction of electricity was found by the officers of Respondent No.1. The Petitioner refused to comply with the alleged illegal demands of the officers of Respondent No.1, who thereafter disconnected the electricity meter and took the meter away. Respondent No.4 thereafter raised a provisional bill to the tune of Rs.8,79,426/- for the period of 19th July 1998 to 18th July 2001. The bill was challenged in the Court by the Petitioner. In Civil Revision Application filed by the Petitioner challenging the order of the lower Appellate Court, this Court by order dated 16th August, 2001 directed the Petitioner to deposit 20% of the amount claimed in the provisional bill and Respondent No.4 was directed to determine the final bill and the Petitioner was granted liberty to approach the appropriate authority. The Respondents were directed to restore the electricity. The Petitioner complied with the said order and deposited 20% of the provisional bill amount i.e.

Rs.1,75,886/-. The Respondent No.4 heard the application of the Petitioner and determined the final bill to the tune of Rs.8,64,792.16. Being aggrieved, the Petitioner filed an Appeal on 14th September, 2001 to Respondent No.2 against the order of Respondent No.4. Respondent No.2 by order dated 18th October 2001, finally assessed the bill and found that an amount of Rs.7,86,614.19 was payable. This was communicated to the Petitioner by Respondent No.4 vide letter dated 29th October, 2001. The Petitioner was called upon to pay the balance amount of Rs.18,052/- which was computed after taking into account the amount of Rs.1,75,886/-, which had already been paid by the Petitioner, on or before 31st October, 2001 failing which the Petitioner's supply would be disconnected without prior notice. The Petitioner in response addressed a letter dated 30th October, 2001 to Respondent No.2 stating that the final assessed bill issued was on the basis of 19 KW instead of 17.17 KW as allegedly informed by the Flying Squad of the MSEB. It was mentioned that the earlier assessment had also been done on the 17 KW load. In response to the letter of the Petitioner, the MSEB by letter dated 4th December 2001 stated that

connected load of 19 KW was considered for final assessment as per the inspection report of the Deputy Executive Engineer (Inspection), Bhandup Urban Zone and a copy of the report has been enclosed. The Petitioner was therefore, called upon to make payment of the final assessed bill. Hence this Petition.

3. Mr. Malpathak, the learned counsel for the Petitioner has submitted that the final assessed bill of Rs.1,78,614.19 is erroneous as Respondent No.4 has improperly calculated the load in the final assessed bill on the basis of 19 KW load instead of 17.17 KW as informed by the Flying Squad of the MSEB and despite the earlier assessment being done on 17 KW load. He has referred to clause 31 of the Maharashtra State Electricity Board conditions and miscellaneous charges for supply of electrical energy and has stated that for LT consumers under the heading pilferage, the formula is set out viz. the connected load to be taken into account is that which is found at the time of inspection in KW multiplied by the diversity factor and load factor and number of working hours per day day 7 as well as number of days in a month. For

non-commercial, which the Petitioner's hotel fell under the diversity factor into load fact or is mentioned as 50% and the number of working hours / days is mentioned as 6 and number of days per month as 25. He has stated that if this calculation had been done according to the connected load as per 17.17 KW which was found at the time of inspection by the Flying Squad of the MSEB then the bi-monthly units would be 2576 units. He has submitted that the Respondent No.1 had taken connected load to be 19 KW and thus came to a total of 6650 units as the bi-monthly units. He has submitted that if the correct computation had been taken into account on the basis of 17.17 KW then the Petitioner has already deposited an amount of Rs.1,75,886/- and hence there was nothing payable to the Respondents. On the contrary the Respondents ought to have refunded the amount paid by the Petitioners. He has submitted that the Respondents could only assess for the period between 3rd January 2001 to 18th July 2001 as the meter had been sealed on 3rd January 2001 and MSEB had found that there had been tampering of the sealed meter. He has contended that the Respondents have incorrectly taken the assessment

period to be from 17th September 1999 to 18th July 2001 when they themselves have assessed the period of illegal extraction from 3rd January 2001 to 18th July 2001. He has, therefore, submitted that this Petition ought to be allowed.

4. Ms. Shiledar the learned counsel for Respondent Nos. 1 and 2 has supported the final assessed bill. She has submitted that the said clause 31 had been complied with and hence there was no merit in the Petition.

5. We have carefully considered the submissions. We are of the view that the Petitioner has raised disputed questions of facts viz. whether 19 KW load instead of 17.17 KW load was to be the basis for the final assessed bill. The Petitioner has claimed that the basis should have been 17.17 KW as according to the Petitioner this had been informed by the Deputy Executive Engineer of the Flying Squad of MSEB when they took inspection. This has been disputed by the Respondents who claim that the connected load was 19 KW which was considered for calculating the final assessed bill payable by the Petitioner and this load was according to the

Respondents in as per the inspection report of the Deputy Executive Engineer (Inspection), Bhandup Urban Zone and is also verified with that printed on the energy bill. We are of the view that, it will not be appropriate for this Court in Writ jurisdiction to determine these disputed facts and that the Petitioner ought to have availed of the appropriate remedy available to the him. We are therefore of the view that this Petition is liable to be dismissed.

6. We accordingly dismiss the present Petition with no order as to costs. Rule stands discharged.

**( RIYAZ I. CHAGLA J. )**

**( VASANTI A. NAIK, J )**