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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6814 OF 2014

Royal Energy Limited & Anr. ...Petitioners
vs.
Maharashtra State Electricity
Distribution Company Limited & Anr. ...Respondents

Mr.M.M.Vashi, Senior Advocate with Ms P. Desai i/b
M.P.Vashi Associates for the Petitioners
Mr.Rahul Sinha i/b DSK Legal for the respondent No.1
Ms Aparna Vhatkar for respondent No.2

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : APRIL 25, 2017

P.C.:

1 On the earlier date, the parties were put to notice that the petition will be forthwith taken up for final disposal. Accordingly, we issue Rule. The learned counsel for the first respondent waives service. The learned AGP waives service for the second respondent.

2 By this petition under Article 226 of the Constitution of India, the petitioners have taken an exception to the order/communication dated 19th April 2014 issued by the second respondent on an Appeal preferred by the petitioners under section 127 of the Electricity Act, 2003 (for short "the said Act of 2003"). The petitioners preferred the said Appeal for challenging the final assessment order dated 26th April 2013 issued by the first

respondent. According to the case of the petitioners, the impugned order dated 26th April 2013 was served to the first petitioner on 18th March 2014. According to the case of the petitioners, an Appeal was preferred on 4th April 2014 within the stipulated period provided under section 127 of the said Act of 2003.

3 By the impugned communication/order, the Appeal was dismissed on the ground that it was barred by limitation. It was also observed that 50% of the assessment amount payable as per sub-section 2 of section 127 was not deposited which is a condition precedent for entertaining the Appeal. It was observed that the Appeal fee is also not deposited.

4 On the earlier date, we had called upon the learned counsel for the first respondent to take instructions on the factual statement made in clause (b) of paragraph 14 of the Writ Petition that the order dated 26th April 2013 was served to the petitioners on 18th March 2014. The learned counsel for the first respondent on instructions states that there is no documentary evidence available with the said respondent to contradict the said stand taken by the petitioners. We accept the said statement.

5 Under sub-section (1) of section 127, period of limitation provided is 30 days. In the present case, the Appeal was preferred on 4th April 2014. We will have to proceed on the footing that the impugned order of final assessment which was passed

on 26th April 2013 was served on the petitioners on 18th March 2014 and therefore, the Appeal was preferred within stipulated period of limitation. The learned senior counsel for the petitioners on instructions states that the petitioners will deposit 50% of the assessment amount payable as per sub-section 2 of section 127 within a period of four weeks from today. He states that within the same time, the appeal fee will also be deposited.

6 In large number of cases, we have noticed that similar orders are passed by the second respondent dismissing the appeal on the ground of bar of limitation or on the ground of failure to comply with sub-section 2 of section 127. As in other cases, even in this case, the impugned order has been passed without giving an opportunity of being heard to the appellants/petitioners. The appeal is dismissed by the impugned order on the ground of bar of limitation and on the ground of failure to deposit appeal fee. In our view, the second respondent ought to have given an opportunity of being heard to the petitioners before dismissing the appeal on the aforesaid grounds. The petitioners could have always explained to the second respondent that that appeal preferred by them was within limitation. Sub-section 2 of section 127 of the said Act 2003 provides that the appeal should not be entertained unless requisite amount is deposited. The second respondent could have always granted a reasonable time to the petitioners to comply with the said requirement and to pay appeal fee.

7 Hence, we dispose of the petition by passing the following order:

- (I) The impugned communication/order dated 19th April 2014 (Exhibit-H) is hereby quashed and set aside;
- (II) The appeal preferred by the petitioner on 4th April 2014 is restored to its original position;
- (III) We accept the statement made by the learned senior counsel for the petitioner that compliance with sub-section 2 of section 127 and compliance with the requirement of payment of appeal fee will be made within a period of four weeks from today. If compliance as aforesaid is made within four weeks from today, the second respondent shall proceed to decide the appeal in accordance with law;
- (IV) Considering the fact that the appeal was preferred in the year 2014, the second respondent shall give necessary priority to the disposal of the appeal and shall endeavour to dispose of the appeal within a period of four months from today subject to compliance with the aforesaid directions;
- (V) All contentions of the parties on the merits of the Appeal are kept open;
- (VI) The second respondent shall ensure that no appeal preferred under section 127 of the said Act 2003 is dismissed on the procedural grounds such as bar of limitation, compliance with sub-

section 2 of section 127 and non payment of
Appeal fee without giving a reasonable
opportunity of being heard to the appellant;

(VII) Rule is made absolute on above terms;

(VIII) All concerned to act upon an authenticated
copy of this order.

(A.K.MENON,J.)

(A.S.OKA,J.)