

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.114 OF 2017

The Maharashtra Krushak Hitwardhak
Sanghatana ...PETITIONER

VERSUS

The State of Maharashtra & ors. ...RESPONDENTS

.....
Shri A.G. Talhar, Advocate for petitioner
Mrs. A.V. Gondhalekar, A.G.P. for State
Shri Ratnakar Singh, Advocate for respondent No.4
Shri A.S. Bajaj, Advocate for respondent No.5
.....

WITH

CIVIL APPLICATION NO. 9612 OF 2018

Sachin s/o Pralhad Dhande ...APPLICANT

VERSUS

The Maharashtra Krushak Hitwardhak
Sanghatana & ors. ...RESPONDENTS

.....
Shri A.G. Talhar, Advocate for applicant
Mrs. A.V. Gondhalekar, A.G.P. for State
Shri Ratnakar Singh, Advocate for respondent No.4
Shri A.S. Bajaj, Advocate for respondent No.5
.....

CORAM: PRASANNA B. VARALE AND
 MANISH PITALE, JJ.

DATED : 20th AUGUST, 2018.

ORAL ORDER :

1. Heard Mr. Talhar, the learned counsel appearing for the petitioner, learned A.G.P. for respondents No.1 to 3, Mr. Ratnakar Singh, learned counsel for respondent No.4- the Maharashtra State Electricity Regulatory Commission and Mr. Bajaj, learned counsel appearing for respondent No.5- Maharashtra State Electricity Distribution Company Ltd., Mumbai.

2. The petitioner is a Society or organisation under the name of the Maharashtra Krushak Hitwardhak Sanghatana and it is submitted that the petitioner espouses the cause of agriculturists in general and in the petition, particularly the cause espoused of the agriculturists is in relation to energy supply. Though learned counsel Mr. Talhar invited our attention to certain provisions of the Electricity Act, Mr. Talhar, learned counsel fairly submitted that, the Commission passed the order in a petition filed by the petitioner without hearing the counsel. Mr. Talhar, on instructions, submitted that, the counsel was unable to attend the commission for some unforeseen difficulty on the date scheduled for hearing. Mr. Talhar then invited our attention to the order placed on record at Exhibit L, and

submitted that, an application was filed for seeking restoration of the proceedings i.e. Case No.204/2014. On going through the order passed by the Commission, it reveals that, the Commission records that, the counsel was not present when the Commission heard the case. It may be useful to refer to the observations of the Commission, referred to in para No.9 and it reads :-

"While dismissing MKHS' Petition in case No.138 of 2013 for non-appearance, the commission had nevertheless also stated its view on the merit of MKHS' contentions as follows in its Order dated 12th March 2014.

(Emphasis supplied).

3. The Commission then again in para 7 of the order, referred to certain provisions and then states that, the petitioner is having remedy available with him to file a fresh petition within thirty days on the same issue, but the petitioner failed to avail of this remedy. Mr. Talhar submitted that, it was only because of the difficulty of the counsel, the petitioner could not put up their case before the Commission and if the counsel could have been present before the Commission, the counsel could have made the attempt to support the case of petitioner even by referring to the provisions and he could have made submissions about the applicability of these provisions in the case of petitioner.

4. Learned counsel Mr. Talhar further submits that, as

the order of the Commission though states, is on merits, in fact it only refers to the provision and the fact remained that, the counsel was not present before the Commission. Mr. Talhar then submits that, the petitioner is ready to avail the remedy of filing a fresh petition before the Commission. Mr. Talhar then submits that, the only apprehension of the petitioner that the petitioner may not be thrown out of the Commission on the ground that the petitioner is approaching the commission belatedly. Mr. Talhar then submitted that, as the issue raised by the petitioner is in respect of energy supply to the agriculturists, which is a basic need for the agriculturists and the grievance of the petitioner is a genuine grievance, the learned counsel appearing for the respondents though opposed the submission of Mr. Talhar, the learned counsel for the petitioner, we are of the opinion that, such an opportunity can be provided to the petitioner as the Commission in its orders, specifically referred to the remedy available to the petitioner for filing the petition afresh.

5. It is not in dispute that, when the Commission heard the case, the counsel for petitioner was not present before the Commission. If an opportunity is given to the petitioner to file a fresh petition before the Commission and the Commission is directed to decide the petition afresh on its own merits, in our opinion, no prejudice is going to be caused to the respondent

authorities and this exercise would only help to meet the ends of justice. Resultantly, we are disposing of the P.I.L. Petition with directions to the Commission to permit the petitioner to file a fresh petition. The petitioner to file fresh petition before the Commission within two weeks from today. If such petition is filed within the stipulated period of two weeks, the Commission to decide the petition, needless to state, on merits, within eight weeks. By such a direction, we are of the opinion that the grievance of the petitioner can be redressed at a level of competent authority, which is approved in the Electricity Act. The P.I.L. Petition is accordingly disposed of.

6. In view of disposal of the P.I.L. Petition, nothing survives in Civil Application No.9612/2018. Accordingly, Civil Application No.9612/2018 is disposed of.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-