

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10053 OF 2018

M/s. Sanghi Udyog India Pvt Ltd ..Petitioner

Vs.

Maharashtra State Electricity
Distribution Co Ltd and Others ..Respondents

Mr. Mahendra Agavekar, for the Petitioner.

Mr. Ashish Singh I/b DSK Legal, for Respondent Nos.1 and 2.

Mrs S. D. Vyas, “B” Panel Counsel, for Respondent Nos.3 and 4
State.

CORAM:-**S. C. DHARMADHIKARI &**
B. P. COLABAWALLA, JJ.
DATE :- **SEPTEMBER 24, 2018.**

P. C.:

Anjali
Tushar
Aswale

Rule. Respondents waive service. By consent, Rule is
made returnable forthwith.

2 This Petition challenges the order passed by
Respondent No.3 refusing to condone the delay in filing of an
Appeal under Section 127 of the Electricity Act, 2003 (for short
“the Act”)

3 That Appeal challenges the bill which was raised on the
Petitioner consumer.

4 The bill amount was questioned and in terms of the
statutory requirement, 50% of the sum demanded was paid under
protest by the Petitioner. Thereupon it filed this Appeal.

5 This Appeal has been placed before Respondent No.3
who refused to condone the delay. The delay was caused according
to the Petitioner/Appellant because the Director concerned as also
the Legal Department Officials were not in town. It is only upon
their return, they noticed that the Appeal was not filed in time.
Since the amount was paid under protest and to the extent
indicated above, they prayed that a lenient view be taken.

6 It is such an application which has been dismissed and
on perusal of the impugned order we find that a hyper technical
view has been taken by the Appellate Authority. It is true that the
Appeal has to be filed within a period of 30 days and the period of
30 days has to be computed in terms of the Appellate provision
from the date the assessment has been made. The assessment is

made in terms of Section 126 of the Act which appears in Part XII titled as "Investigation and Enforcement". Section 126 contemplates an inspection of any place or premises. It is not just the inspection of the place or premises but that provision also enables inspection of the equipments/gadgets, machines, devices found connected or used. Equally, the records can be inspected and as maintained by the consumer. If then the Assessing Officer comes to the conclusion that the consumer is indulging in unauthorized use of electricity, he has to provisionally assess according to his best judgment the electricity charges payable by such person or by other persons benefited by such use. This is the provisional assessment order which gains finality only after a notice has been served on the person in occupation or in-charge of the place or premises in such manner as may be prescribed. He has to be given a reasonable opportunity of being heard. Thereafter, the assessment can be finalized in terms of sub-sections (5) and (6) of Section 126 of the Act. Thus, if the assessment results in a demand based on a rate applied (twice) the tariff applicable for the relevant category of services, then, the remedy of an Appeal is to the Appellate Authority. Therefore, the order that is contemplated is the final order in terms of Section

126 of the Act. The Appellate Authority in this case has neither discussed as to whether the delay of 30 days is after service of the final order in terms of Section 126 of the Act or whether such service being effected, there is absolutely no reason not to prefer the Appeal within time. Finally, whether the reason or explanation given is bonafide or reasonable. In the absence of all this the Appeal could not have been dismissed on account of delay. Thus, in the peculiar facts and circumstances, we find that there is total non-application of mind. Consequently, we quash and set aside the impugned order. We condone the delay in filing of the Appeal and restore the Appeal to the file of the Appellate Authority for being decided on merits and in accordance with law.

7 The Writ Petition succeeds accordingly. There will be no order as to costs.

8 Rule is made absolute in the aforesaid terms.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)