

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 1320 OF 2019

Nazleen Mansoor Sayyed

...Petitioner

vs

The State of Maharashtra & Ors.

...Respondents

Ms.Ratna R. Jaiswal for Petitioner.

Mr.Manish Upadhye, AGP for Respondent No.1.

Mr.Satish Kamat for Respondent No.3.

CORAM : S.C.GUPTE, J.

DATE : 30 APRIL 2019

P.C. :

Heard learned Counsel for the parties.

2 This writ petition challenges an order passed by Respondent No.2 refusing to entertain an appeal under Section 127 of the Electricity Act ("Act"). The subject matter of challenge in the present petition is a final assessment order passed by Respondent No.3 under Section 126 of the Act. The order was challenged by the Petitioner by filing of an appeal under Section 127 of the Act. The Petitioner even showed her willingness to deposit 50% of the amount of the disputed assessment. The Petitioner's appeal was, however, not entertained by Respondent No.2 appellate authority, since it was beyond time. In pursuance of the impugned order of assessment and non-payment of the amount of the disputed assessment, the electricity provided to the Petitioner has been disconnected by Respondent No.3. That was in the month of December 2018.

3 Learned Counsel for the Petitioner submits that her client will make an application for condonation of the delay in filing her appeal. She relies on several judgments including two judgments of this court in cases of **Rakhee Gupta vs. The State of Maharashtra**¹ and **Ranjana Shivdas Kale vs. The State of Maharashtra**² as well as judgment of Calcutta High court in the case of **Omevati Devi Agarwal vs. C.E.S.C. Ltd.**³ in support of her case that the appellate authority has power to condone delay in filing an appeal under Section 127 of the Act. Learned Counsel for Respondent No.3 disputes the proposition. Be that as it may, learned Counsel submits that if a proper application for condonation is made by the Petitioner, Respondent No.2 appellate authority may consider the same. In the meantime, the Petitioner prays for reconnection of electricity.

4 The Petitioner's electricity connection may have to be restored subject to her paying the principal amount of the disputed assessment to Respondent No.3. It is, however, made clear that if the Petitioner's appeal is decided in her favour by Respondent No.2 appellate authority, such amount, as may be found to be not due by the Petitioner, shall be refunded by Respondent No.3.

5 The petition, accordingly, is disposed of in terms of the following order :

- (i) The impugned order passed by the appellate authority on 19 March 2019 rejecting the Petitioner's appeal on the ground of

1 WP No.1674 of 2016 decided on 18.10.2016

2 WP (Lodging) No.3350 of 2013 decided on 18.2.2014

3 WP No.17590 (W) of 2015 decided on 30.9.2015

limitation under Section 127(1) of Electricity Act, 2003 is quashed and set aside;

- (ii) The Petitioner shall make within a period of two weeks from today a proper application for condonation of delay in filing her appeal. Such application shall be decided by Respondent No.2 in accordance with law;
- (iii) All rights and contentions of the parties on merits in that behalf are kept open;
- (iv) Subject to the Petitioner making an ad-hoc deposit of Rs.74,954/-, her electricity connection shall be restored by Respondent No.3. The amount paid by the Petitioner to Respondent No.3 shall, however, be subject to the final decision in the Petitioner's pending appeal;
- (v) Upon reconnection of her electricity supply, the Petitioner agrees to pay regular monthly bills as may be due from time to time.

(S.C. GUPTE, J.)