FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 71/2019
(MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED, NAGPUR **VERSUS** M/S AFCONS INFRASTRUCTURE LIMITED & ANOTHER)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri S.V. Purohit, counsel for petitioner.
Shri Harinder Toor with R.J. Mirza, Advocate for R-1.

CORAM : A.S. CHANDURKAR, J.
DATE : MAY 04, 2019.

In this writ petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order passed by the Appellate Authority under Section 127 of the Electricity Act, 2003 (for short, 'the said Act') whereby the appeal preferred by the respondent no.1 herein has been allowed and the final assessment order dated 20.08.2009 has been set aside.

The facts in brief are that the respondent no.1-Company claims to be engaged in the business of Infrastructure, Construction and Development. Pursuant to the work order dated 26.06.2006 for construction of a railway over bridge, the respondent no.1 was required to install an industrial Batching plant. In that regard the petitioner granted an HT-1 connection to the respondent no.1 on 03.01.2007. The Officers of the petitioner visited work premises of the respondent no.1 on 12.05.2009 and submitted an inspection report in which it was stated that the electricity connection was being utilized for construction activities and not for industrial purposes. Based on that report, provisional assessment orders came to be issued on 23.07.2009, 29.07.2009 and 11.08.2009. On the basis of said provisional assessment orders, the petitioner issued a final assessment order on 20.08.2009. It was stated that there was unauthorized use of electricity. Against that adjudication the respondent no.1 had filed an appeal before the Consumer Grievance Redressal Forum which on 17.12.2009 held in favour of the respondent no.1. Since there was non-compliance of the directions as issued, the respondent no.1 filed a complaint before the Maharashtra Electricity Regulatory Commission. The order passed by the Forum was challenged by the petitioner herein by filing a writ petition. This Court by its order dated 27.01.2012 in Writ Petition No.3999 of 2010 permitted the respondent no.1 to file an appeal against the final assessment order under Section 127 of the said Act. On that basis the aforesaid appeal was filed and by the impugned order that appeal has been allowed by the respondent no.2. Being aggrieved, the said adjudication has been challenged in the present writ petition.

Shri S.V. Purohit, learned counsel for the petitioner submitted that the Appellate Authority was not justified in setting aside the final assessment order dated 20.08.2009. Merely on the ground that provisional assessment under Section 126 was made on three occasions, the same could not be a ground for holding the final assessment order to be bad in law. There was no bar under Section 126 of the said Act to issue multiple provisional orders and infact there was no objection raised by the respondent no.1 to such provisional assessments. During the course of inspection, it was found that there was unauthorized use of electricity by the respondent no.1. Though permission was granted to use the electricity at the Batching Plant for construction of the bridge, the connection was being used with regard to construction activity which was against the sanctioned purpose of supply. It was then submitted that mere fact that the provisional assessment order was not issued within a period of seven days from the date of the inspection would not be a ground to hold the said assessment to be bad in law. The requirement of issuing the provisional and the final assessment orders in the prescribed format was merely directory in nature and the any minor deviation would not vitiate the exercise undertaken by the petitioner. It was further submitted that absence of entries with regard to the inspection undertaken in the log-book would also not vitiate the orders of assessment. There was no reason to doubt the actual inspection undertaken by the Officers of the petitioner and hence non-production of the log-book would not vitiate that exercise. As due opportunity of hearing as contemplated by the provisions of Section 126(3) of the said Act had been given to the respondent no.1, it could not be said that such opportunity was not given while passing the final assessment order. In support of his submissions, the learned counsel placed reliance on the decisions in *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) & Another Versus Sri Seetaram Rice Mill* [**(2012) 2 SCC 108**], *State Bank of Patiala & Others Versus S.K. Sharma* [**AIR 1996 SC 1669**], *Kailash Versus Nanhku & Others* [**AIR 2005 SC 2441**], *State of U.P. Versus Harendra Arora & Another* [**AIR 2001 SC 2319**] and *Topline Shoes Ltd. Versus Corporation Bank* [**AIR 2002 SC 2487**] on the aspect that the requirements as to production of the log-book and issuance of assessment orders in the prescribed format were directory in nature. According to the learned counsel as the adjudication by the Appellate Authority was based on incorrect application of law and was therefore perverse in nature, this Court ought to interfere under Article 227 of the Constitution of India. For that purpose, he referred to the decisions in *Shama Prashant Raje Versus Ganpatrao*

& Others [**(2000) 7 SCC 522**] and *Maharashtra Academy of Enginerring & Educational Research Versus State of Maharashtra & Others* [**(2001) 10 SCC 166**]. It was thus submitted that the impugned order passed by the respondent no.2 was liable to be set aside. In the alternate and without prejudice to the aforesaid, it was submitted that if it was found by this Court that all relevant aspects of the matter had not been considered by the Appellate Authority, the proceedings be remanded for fresh consideration.

On the other hand, Shri Harinder Toor, learned counsel for the respondent no.1 supported the impugned order. Referring to the issuance of three provisional assessment orders, it was submitted that even the first assessment order dated 23.07.2009 was not issued within seven days from the date of the spot inspection which was undertaken on 12.05.2009. Referring to the provisions of the Conditions of Supply based on the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 and especially Clause No.24.3.3, it was submitted that the provisional assessment order was required to be served on the respondent no.1 not later than seven days from the date of the inspection. The provisions in that regard were mandatory in nature and in absence of any explanation for issuance of the successive provisional assessment orders, the Appellate Authority was justified in holding against the petitioner. Even if the last provisional assessment dated 11.08.2009 was taken into consideration, it was issued after almost three months from the date of inspection. It was then submitted that the factual and material aspects that were required to be considered had to be based as existing on the date of inspection. Events that had transpired after the date of inspection could not have formed the basis of the provisional assessment and hence the entire exercise was vitiated. Reference was also made to Clause 24.2 in that regard. The learned counsel then referred to the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 and especially Clause 8.4 thereof to urge that the inspection of the premises in question has to be recorded in the log-book to be maintained by the Distribution Licensee alongwith the name of such Officer and details of the visit to the consumer's premises. This requirement was of material importance so as to indicate the authenticity of such inspection. These requirements had not been complied with by the petitioner. It was further submitted that there was no such category as HT-Temporary as sought to be canvased by the petitioner. On the aspect of temporary supply, reference was made to Clause 2.1(v) of the Regulations to indicate that if the supply of electricity did not exceed period of two years, it would be temporary supply. It was thus submitted that the Appellate Authority rightly found various material discrepancies while passing the final assessment order and hence rightly allowed the appeal filed by the respondent no.1. In absence of any jurisdictional error, it was not permissible to re-appreciate the entire material on record as sought to be urged by the petitioner. Placing reliance on the decisions in *Shalini Shyam Shetty & Another Rajendra Shankar Patil* [**(2010) 8 SCC 329**], *Atlas Cycle (Haryana) Limited Versus Kitab Singh* [**(2013) 12 SCC 573**] and *Radhey Shyam & Another Versus Chhabi Nath & Others* [**(2015) 5 SCC 423**], it was submitted that there was no case made out to interfere in writ jurisdiction. Reference was also made to the decision in *Hukam Chand Shyam Lal Versus Union of India & Others* [**(1976) 2 SCC 128**] to urge that when the regulations specified the manner in which the inspection was to be undertaken, it was required to be done in that manner alone.

It was then submitted that the respondent no.1 was entitled to receive the amount of security deposit and the petitioner deserves to be directed to refund the same. Since the Appellate Authority had found that the assessment undertaken by the petitioner was illegal, the respondent no.1 was entitled to refund of the security deposit. Reference was made to the communications issued in that regard.

In reply, it was submitted by the learned counsel for the petitioner that there was no question of refunding the amount of security deposit as no such prayer was made in the appeal preferred by the respondent no.1. In absence of any challenge to that order by the respondent no.1 as regards refund of security deposit, such relief which was now time barred could not be granted in the writ petition filed by the petitioner challenging the order of the Appellate Authority.

I have heard the learned counsel for the parties at length and with their assistance I have perused the documents on record. The Appellate Authority while considering the challenge to the final assessment order dated 20.08.2009 has found certain procedural irregularities while passing the said order. It has been found that there were three provisional assessment orders dated 23.07.2009, 29.07.2009 and 11.08.2009. It has been found that there was no justification for issuing the subsequent provisional assessment orders and the final assessment order dated 20.08.2009 was passed much after the period of seven days from the date of the first provisional assessment order. In this regard, if the provisions of Clause 24.3.3 of the Conditions of Supply Regulations, 2005 are considered, the order of provisional assessment is required to be served on the consumer not later than seven days from the date of inspection. Besides the fact that the provisional assessment orders have been served much after the period of seven days from 12.05.2009 on which date the inspection had taken place, it is found that there is also breach of the provisions of Clause 24.4 of those regulations inasmuch as the final order of assessment has been passed after a period of more than thirty days from the date of first provisional assessment order dated 23.07.2009. The findings therefore recorded on these aspects namely issuance of the order of provisional assessment after a period of seven days from the date of inspection being contrary to Clause 24.3.3 and passing of the final assessment order after a period of more than thirty days from the first provisional assessment order dated 23.07.2009 resulting in breach of Clause 24.4 of the said Regulations are findings that have been rightly recorded by the Appellate Authority based on the said regulations. These findings are based on documentary material on record not requiring any interference.

As regards non-compliance of Clause 8.4 of the Maharashtra Electricity Regulatory Commission Regulations, it is seen that the log-book indicating such inspection having been undertaken on 12.05.2009 was not brought on record by the petitioner. The object behind the same is to ensure that the inspection has been undertaken in a fair manner for which purpose the petitioner is required to maintain its records. Since the respondent no.1 was being charged with unauthorized use of electricity under Section 126 (1) of the said Act which if proved would result in financial implications, it was necessary for the petitioner to have complied with the Maharashtra Electricity Regulatory Commission Regulations of 2005 and especially Clause 8.4 thereof. The material in that regard could have been made available even at the appellate stage but the same was not done. The order of the Appellate Authority on that count also is justified not warranting any interference.

Though non-issuance of the provisional and final assessment orders in the prescribed format at K-1 and K-2 may not in a given case be mandatory in nature, that aspect however by itself cannot save the assessment undertaken by the petitioner. Moreover, the Appellate Authority has found that the petitioner had admitted before it that the Maharashtra Electricity Regulatory Commission had not prescribed HT-Temporary Tariff for being applied and hence the *suo motu* action on the part of the petitioner in that regard was without authority of law and therefore illegal. In that view of the matter, it is found that the Appellate Authority after considering the entire material on record has rightly come to the conclusion that the assessment undertaken by the petitioner for purposes other than industrial use was arbitrary and liable to be quashed. The findings as recorded are supported by the material on record and hence the impugned order cannot be termed to be perverse to warrant interference. After considering the ratio of the decisions relied upon by the learned counsel for the petitioner as regards scope for interference under Article 227 of the Constitution of India, I do not find any case made out to warrant interference in that regard. All relevant aspects of the matter have been taken into consideration by the Appellate Authority while passing the impugned order.

As regards the prayer made on behalf of the respondent no.1 for refund of security deposit, the learned counsel for the petitioner is justified in opposing that request inasmuch as such prayer was not made by the respondent no.1 in the appeal preferred before the respondent no.2. In absence of any independent proceedings being filed by the respondent no.1 for that purpose, the relief of refund of security deposit cannot be granted in the present writ petition filed by the petitioner. Said prayer is thus not considered and it is open for the respondent no.1 to pursue its remedies in that regard in accordance with law.

Hence, for aforesaid reasons, the order passed by the Appellate Authority dated 05.10.2017 allowing the appeal filed by the respondent no.1 under Section 127 of the said Act is confirmed. The writ petition stands dismissed with no order as to costs.

JUDGE

APTE