IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.71 OF 2019

Executive Engineer, Maharashtra State Electricity Distribution Company Ltd.	…	Petitioner
Vs.		
M/s. Pioneer Estate Corporation	…	Respondent

Ms Anjali R. Shiledar for Petitioner.
Mr. A. R. Kapadnis for Respondent.

CORAM	**:**	**UJJAL BHUYAN, J.**
Reserved on	**:**	**DECEMBER 04, 2019**
Pronounced on	**:**	**FEBRUARY 05, 2020**

ORDER :

Heard Ms Anjali R. Shildar, learned counsel for the petitioner and Mr. Kapadnis, learned counsel for the respondent.

2. By filing this petition under Article 227 of the Constitution of India, petitioner has challenged legality and correctness of the impugned order dated 05.10.2017 passed by the Appellate Authority under Section 127 of the Electricity Act, 2003 (briefly 'the Act' hereinafter') in Appeal No.7 of 2015 filed by the respondent.

3. Petitioner is the Maharashtra State Electricity Distribution Company Limited represented by the Executive Engineer, Thane Division-II. Maharashtra State Electricity Distribution Company Limited is a Government of Maharashtra Undertaking and is a distribution licensee under the Act. Respondent is a Low Tension Consumer of the petitioner operating an automobile garage. Connection was sanctioned to the respondent on 30.01.1997 for industrial purpose as electricity connection to an automobile garage was construed to be an industrial connection.

4. On 22.08.2014, officials of the petitioner inspected the premises of the respondent. During inspection it was found that respondent had stopped industrial activities and had given the said premises on rent to M/s. S. C. Auto Corporation, which was using the electricity connection for commercial purpose i.e., automobile service centre / workshop.

5. It is contended that such activity i.e., automobile service centre / garage is considered as commercial category. Thus, the electricity connection was used for the purpose other than for which it was sanctioned. Vide assessment order dated 29.09.2014, petitioner held the same to be unauthorized use of electricity under Section 126(6)(b)(iv) of the Act. Accordingly, action under Section 126 of the Act was taken against the respondent. Pursuant thereto, an order was passed billing an amount of Rs.98,16,300.00. This was for the period from 01.05.2009 to 30.08.2013 i.e., for a period of 52 months.

6. This was challenged by the respondent by filing appeal which was registered as Appeal No.7 of 2015. The appeal was contested by the petitioner. After hearing the parties, Appellate Authority passed an order under Section 127 of the Act holding that Automobile Service Centre / Workshop / Garage comes under industrial category. Accordingly, the assessment order dated 29.09.2014 passed under Section 126 of the Act was set aside. In addition thereto, assessing officer was directed to refund 50% of the assessed amount which was deposited at the time of filing the appeal with 16% interest. Fine imposed was also directed to be refunded.

7. Aggrieved, present writ petition has been filed.

8. Elaborate submissions were made by learned counsel for the parties which have been duly considered.

9. Though facts are not in dispute, a brief recapitulation of the same is considered necessary.

10. Respondent was engaged in the activity of car repairing, re-building damaged cars, etc. i.e., automobile service centre / garage. It was provided electricity connection with effect from 30.01.1997 categorizing such activities as industrial. Accordingly, respondent was billed as a consumer consuming electricity for industrial purpose.

11. On 22.08.2014, officials of the petitioner inspected the premises of the respondent. Following inspection, provisional assessment order was passed under Section 126 of the Act assessing an amount of Rs.98,16,300.00 as the electricity tariff for the period from 01.05.2009 to 31.08.2013 for use of electricity for commercial purpose. Though objection was filed by the respondent, the same was not accepted by the departmental authority following which assessing officer passed final order of assessment dated 29.09.2014 levying an amount of Rs.98,16,300.00 as the electricity charges for the period from May, 2009 to August, 2013.

12. This was assailed by the respondent before the Appellate Authority under Section 127 of the Act. After hearing the matter, Appellate Authority accepted the contention of the respondent vide the appellate order dated 05.10.2017. Appellate Authority held that since 1997, respondent was given three phase industrial electricity supply connection. For the period from 01.05.2009 to 31.08.2013, respondent had let out the said premises to M/s. Modi Motors and M/s. S. C. Corporation on rental basis. Both the tenants used electricity for car repairing and servicing; in other words, for automobile garage work similar to that of the respondent. Appellate Authority referred to Government Notification of 1997, which recognized automobile garage as industrial factory. Appellate Authority noted that District Industry Centre had issued certificate to the respondent on 30.09.2013 certifying activity of the respondent as service category. Since the certificate was issued on 30.09.2013 i.e., after the disputed period, the same was not

considered by the Appellate Authority. Appellate Authority considered the government notification as per which automobile garage service was considered as industrial factory since 1997. However, it was noted that Maharashtra State Electricity Regulatory Commission on 01.08.2012 decided to change the category for use of electricity in automobile garage from industrial to commercial. Appellate Authority also referred to its earlier decision in the case of the respondent itself in Appeal No.15 of 2009-10 relating to the period from 01.02.2008 to 31.01.2009 wherein automobile garage was construed as industrial category for the purpose of electricity tariff. On that basis, Appellate Authority held that till 01.08.2012, respondent would be considered as user of electricity under industrial category.

13. In the light of the above, Appellate Authority held that treating the respondent as a commercial consumer for the disputed period was not justified. Accordingly, vide the appellate order dated 05.10.2017, the final assessment order was set aside and the amount deposited by the respondent at the time of filing appeal i.e., 50% of the assessed amount being the statutory requirement was directed to be refunded back to the respondent with 16% interest thereon. Fine imposed by the petitioner on the respondent was also directed to be refunded.

14. At this stage, Sections 126 and 127 of the Electricity Act, 2003 may be adverted to. Section 126 deals with assessment whereas Section 127 deals with appeal to Appellate Authority.

14.1. Sub-section (1) of Section 126 says that if on an inspection of any place or premises etc. of a person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use. The key expression to be noted is "unauthorized use of electricity". If the assessing officer comes to the conclusion that the person concerned is indulging in unauthorized use of electricity, he shall make provisional assessment to the best of his judgment.

14.2. Once provisional assessment is made, copy of the same is to be served upon the person concerned who may accept the same in which event he may deposit the said amount or he may file objection. If objection is filed, the assessing officer shall hear the person on the objection and thereafter pass final order of assessment.

14.3. The expression "unauthorized use of electricity" is defined in Explanation (b) to sub-section (6) of Section 126. The definition is exhaustive and mentions four usages of electricity in which case it would be construed to be an "unauthorized use of electricity". In so far the present case is concerned, it is admittedly the fourth usage because the final assessment order was made under Section 126(6)(b)(iv). As per the fourth usage or condition, if electricity is consumed for a purpose other than for which the usage of electricity was authorized, then it will be construed to be an “unauthorized use of electricity”. Adverting to the present case, can usage of electricity by the respondent for the period in question be construed to be "unauthorized use of electricity" on the ground that electricity was consumed for a purpose other than for which the usage of electricity was authorized.

15. Before examining this aspect of the matter, it would be apposite to deal with the appellate provision. Any person who is aggrieved by the final order of assessment under Section 126 may within the time provided and in the manner prescribed may file appeal to the Appellate Authority under sub-section (1) of Section 127. However, as per sub-section (2), such an appeal shall not be entertained unless an amount equal to half of the assessed amount is deposited with the licensee.

15.1. Another provision which is relevant is sub-section (6) of Section 127. It says that when a person defaults in making payment of the assessed amount on expiry of the specified period, he would be liable to pay interest at the rate of 16 percent per annum compounded every six months in addition to the assessed amount.

16. In so far the present case is concerned, though the premises were rented out by the respondent, the usage of electricity was not changed i.e., it remained the same. Those who had taken the premises on rent were also consuming electricity for automobile garage.

16.1. It is the admitted position that user of electricity for automobile garage purpose was changed from industrial category to commercial category from 01.08.2012. In other words, till 31.07.2012, usage of electricity for automobile garage was construed to be for industrial purpose. The final order of assessment covered the period from 01.05.2009 to 31.08.2013. Therefore, though the reasoning of the Appellate Authority that there was no unauthorized use of electricity on account of usage of electricity for purpose other than for which the usage of electricity was authorized appears to be sound but the fact remains that from 01.08.2012, categorization of electricity consumption in respect of automobile garage was changed from industrial to commercial. Therefore, at least from 01.08.2012, respondent was liable to pay electricity tariff as a commercial consumer. Hence, from 01.08.2012 onwards, respondent could be construed to be a commercial consumer and not as industrial consumer. This aspect of the matter was overlooked by the Appellate Authority. That apart, imposing interest on the petitioner on the statutory deposit by the respondent since directed to be refunded at the rate of 16% appears to be not justified. The provision for payment of interest on the assessed amount by a defaulting consumer cannot be invoked while directing refund of statutory deposit by the licensee when appeal is allowed.

17. In the light of the discussions made above, the Appellate Authority is required to pass a fresh order in the appellate proceedings.

Consequently, appellate order dated 05.10.2017 is set aside. Matter is remanded back to the Appellate Authority for a fresh decision in accordance with law having regard to the discussions made above. The said order shall be passed by the Appellate Authority within a period of 3 months from the date of receipt of an authenticated copy of this order after giving an opportunity of hearing to both the sides.

18. Writ petition is accordingly disposed of. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)

Minal Parab

Minal V. Parab Digitally signed by Minal V. Parab Date: 2020.02.05 17:11:19 +0530