IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3943/2018.

Shrikant Gajananrao Pise

-**VERSUS**-

Chief Engkineer, Maharashtra State Electricity Distribution Company Ltd. and another.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri A.S. Jaiswal, Senior Advocate with Ms. R. Bajaj, Advocate for the Petitioner.
Ms. G. S. Purohit, Advocate h/f. Shri S.V. Purohit, Advocate for Respondent No.7.

CORAM : A.S. CHANDURKAR & VINAY JOSHI, JJ.

DATE : MARCH 05, 2020.

Heard.

2. The challenge raised in the present Writ Petition is to the action taken purportedly under Section 135 of the Electricity Act, 2003. A specific challenge has been raised to bill issued to the petitioner under Section 135 of the said Act, raising a demand of Rs. 2,50,050/- on account of alleged theft of electricity.

3. It is submitted by the learned Senior

Counsel appearing on behalf of the petitioner that though the aforesaid bill issued was under Section 135 of the said Act and is dated 28.12.2017, the FIR has been lodged by the respondent only on 27.01.2018. Referring to the provisions of Section 135 of the said Act, it is submitted that it was mandatory for the respondent to have filed the FIR within 24 hours of the disconnection. Further referring to the provisions of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions of Supply) Regulations, 2005 and especially Clause 8 thereof, it is submitted that the inspection carried out by the respondent was not in accordance with the procedure prescribed. It was disputed that the petitioner or his representative had refused to sign the spot inspection note. It was wrongly stated therein that the consumer had refused to sign the same. It was urged that the petitioner or his representative were not present when the spot inspection took place, and hence, the noting made therein could not be accepted. Similarly in absence of any other remedy available to the petitioner, the challenge was required to be adjudicated in these proceedings. It was also pointed out that an amount of Rs. 2,50,050/- was already deposited by the petitioner and as the entire action initiated by the respondent under Section 135 of the said Act, was without following the procedure prescribed, the same was liable to be set aside.

4. The learned Counsel appearing on behalf of the respondent on the other hand submitted that there being a clear distinction between the provisions of Sections 126 and 135 of the said Act, the action taken by the respondent under Section 135 was on account of alleged theft of electricity. Spot inspection was carried out by following the due procedure and signatures of panch witnesses were also taken, which indicate refusal of the petitioner or his representative to sign the proceedings. The petitioner had not paid

the compounding charges of Rs.35,000/-. In view of the provisions of Section 154[5] of the said Act, on determination of the civil liability incurred by the petitioner, the question of excess amount if any recovered from the petitioner would be determined. Reference was made to decisions in cases reported at **(2012) 2 SCC 108 (Executive Engineer Southern Electricity Supply Company of Orissa Ltd. and another .vrs. Sri Seetaram Rice Mill)** and **2018 (6) Mh.L.J. 826 (Maharashtra State Electricity Distribution Company Ltd. .vrs. Appellate Authority and another),** in that regard.

5. We have heard the learned Counsel appearing for the parties and have perused the documents on record.

6. The bill dated 28.12.2017, has been issued under Section 135 of the said Act, by specifically referring it to be a theft bill. The distinction between provisions of Sections 126 and 135 is clear. In case of theft, the provisions of Section 135 of the said Act, could be invoked.

The same has been done in the present case.

7. On a prima facie perusal of various documents on record, it is revealed that the spot inspection was carried out on 26.12.2017. This report indicate names of witnesses who were also present with an endorsement that the petitioner refused to sign the same. There is a further report prepared by the Executive Engineer in that regard. The FIR has thereafter been lodged on 27.01.2018. The question whether there is a breach of Section 135[1][a] of the said Act, by virtue of belated filing of FIR, it is a matter to be considered by the Special Court in case the said proceedings proceed further under Section 135 of the Act.

8. As regards deposit of amount of Rs.2,50,050/- by the petitioner is concern, we find that under Section 154[5] of the said Act, the civil liability against the petitioner would be determined by the Special Court. As per Section 154[6], any excess amount deposited by the petitioner is liable to be refunded with interest to

him. It therefore, cannot be said that the petitioner has been left remedy less after deposit of the aforesaid amount.

9. Thus, considering the material on record, we do not find that there is any case made out to quash and set aside the bill issued on 28.12.2017. By clarifying that the observations in this order would not come in the way of the petitioner when the Special Court considers the proceedings, and as we are not inclined to exercise writ jurisdiction in this case, the Writ Petition is dismissed. All questions on merits are kept open for being raised before the Special Court. No costs.

JUDGE **JUDGE**

Rgd.