

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2470 OF 2020

**NOORUDDIN SHER MOHAMMAD CHARNIYA
VERSUS
THE MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION CO LTD THROUGH THE EXECUTIVE
ENGINEER**

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Advocate for the Petitioner : Shri Gandhi Amol S.
Advocate for Respondent 1 : Shri S.V. Mundhe
AGP for Respondent 2 : Smt.V.N.Patil Jadhav

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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 21st October, 2021

Per Court :-

1. On 15.09.2021, we had passed the following order:-

- “1. *The learned advocate for the respondent submits that the affidavit in reply is ready and can be filed in the office. Let such reply be filed on or before 24.09.2021. Copy is already served on the petitioner.*
2. *In view of the law laid down by the Hon’ble Apex Court in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs. Tuticorin Education Society, 2019 SCC Online SC 1292 (Civil Appeal No.7764/2019, decided on 30.10.2019) and Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and others, (2019) 419 ITR 440, a statutory remedy will have to be exhausted by the petitioner and in which case, this petition would not be entertained.*
3. *List this petition on 27.09.2021 in the urgent*

category to address the issue of maintainability.”

2. On 27.09.2021, we had recorded the submissions of the learned advocates as under :-

“1. *The learned advocate for the petitioner submits that after the passage of three (3) years from the date of the allegation of theft, and as no action has been initiated by the respondents, this writ petition is the only remedy. He has paid Rs.20,000/- to respondent No.1 as deposit and has also deposited Rs.74,416/- in this Court. He further submits that certain allegations have been made against him in the affidavit-in-reply and the petitioner desires to file a rejoinder.”*

3. There is no dispute that the respondent has filed the complaint with the concerned Police Station and the Maharashtra State amendment to Section 151(B) of the Electricity Act, 2003, enables the special Police Station to report the said offence to the Special Court. So also, the Special Court can take cognizance of such offence. However, though such offence has been registered, it is a grievance of the petitioner that the charge-sheet has still not been filed.

4. The learned advocate for the petitioner has strenuously canvassed that his client is disputing the assessment as regards the theft. He has deposited Rs.20,000/- with the respondent under protest and has also deposited an amount of

Rs.74,000/- in this Court vide order dated 10.02.2020 when the notice was issued keeping the point of alternate remedy open.

5. Under Section 126 of the Electricity Act, 2003, an assessment has to be made by the respondent. Aggrieved by such assessment, the petitioner can prefer an appeal to the appropriate authority under Section 127.

6. Considering the above and taking into account the State amendment, it would be appropriate to direct the special Police Station at Jalna or in the event of the case having been transferred to the special Police Station at Aurangabad, such police station shall file the charge-sheet within 30 days from today. The learned AGP representing respondent No.2 shall convey this order to the concerned police station promptly so as to ensure that the police station gets sufficient time to file the charge sheet.

7. To balance the equities, we permit respondent No.1 to withdraw the amount of Rs.74,000/- deposited by the petitioner in this Court along with the interest accrued thereon, without prejudice to the rights of the petitioner and temporarily adjust the said amount against his outstanding bills.

8. This Writ Petition is, accordingly, disposed off.

9. Needless to state, all contentions of the petitioner on law points as well as on facts are kept open and the Special Court shall consider all his objections including the objection on limitation, while deciding the complaint.

10. Subject to the recovery of outstanding amounts towards the petitioner, his request that respondent No.1 should issue regular monthly bills, is accepted.

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(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)