

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

**WRIT PETITION NO. 7 OF 2018
WITH
WRIT PETITION NO. 13 OF 2018**

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Rural Circle, Nodal Officer, Aurangabad
Office of Superintending Engineering,
MSEDCL, Rural Circle, Aurangabad
2. The Additional Executive Engineer,
Flying Squad, MSEDCL, Aurangabad Rural,
Aurangabad

..PETITIONERS

VERSUS

M/s B.G. Shirke Construction Technology Pvt. Ltd.,
Gut No. 74-P, Village Deolali,
Tq. and Dist. Aurangabad.
Through its Authorized Representative
Assistant General Manager

..RESPONDENT

....

Mr. Avishkar S. Shelke, Advocate for petitioners
Mr. K.C. Sant, Advocate for respondent

....

CORAM : R.G. AVACHAT, J.
RESERVED ON : 30th JANUARY, 2021
PRONOUNCED ON : 23rd FEBRUARY, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. Identical issue is involved in both these petitions. Both the petitions are between the same parties. The petitions are, therefore, decided by this common judgment.

3. The petitioners are the Maharashtra State Electricity Distribution Company Ltd. ("M.S.E.D.C.L."), while the respondent is M/s B.G. Shirke Construction Technology Pvt. Ltd. ("the Company").

FACTS, IN BRIEF, ARE AS UNDER :-

4. The Maharashtra Housing and Development Authority allotted the project work of construction of tenements at village Deolali, Tq. & Dist. Aurangabad to the respondent company. At the request of the respondent company, M.S.E.D.C.L. sanctioned it electricity connection with 100 H.P. load for industrial purpose with effect from 10th November, 2012. The consumer number allotted in this regard was 491000043111. The respondent company again applied for a separate electricity connection for construction purpose (commercial). The same was provided in June 2013. The consumer number allotted for this connection was 491000053591. Commercial tariff is applied for electricity supply availed for construction purpose.

5. The flying squad of M.S.E.D.C.L. paid surprise visit to the construction site on 13th January, 2015. It carried out spot inspection of

consumer number 491000043111 of the respondent company. It was found that the electricity was used for construction purpose instead of industrial. Accordingly, the spot inspection report was prepared. The panchanama was drawn in the presence of representative of the respondent company. Copy of the inspection report was given to the representative of the respondent company. It was further found that the electricity meter meant for recording of electricity supply for construction activity, was not in use. It had no outgoing connection. As such, the respondent company was found utilising the electricity received for industrial purpose, for the commercial purpose (construction activity). There is substantial difference between the tariffs. Commercial tariff is higher than the industrial tariff. Based on the spot inspection report, the Assessing Officer prepared provisional assessment bill amounting to Rs.47,67,737/-. It was served on the respondent company on 16th March, 2015, calling upon it for personal hearing. Instead of responding to the provisional assessment bill, the respondent company approached Consumer Grievance Redressal Forum ("C.G.R.F.") with prayer to declare that the grievance does not fall under the provision of Section 126 of the Electricity Act, 2003 ("the Act"). A relief in the nature of direction to M.S.E.D.C.L. to withdraw wrongfully issued assessment bill under Section 126 of the Act, was also prayed for.

6. On hearing the parties to the dispute, the C.G.R.F., vide its order dated 03rd September, 2016, rejected the complaint/grievance preferred by

the respondent company. It held that the grievance falls under purview of Section 135(1)(e) of the Act. The M.S.E.D.C.L. was directed to take appropriate action in pursuance of Section 135 of the Act. Disciplinary action was also directed to be taken against the erring officials of the M.S.E.D.C.L.

The respondent company preferred representation, being Case No. 55 of 2016, against the order passed by C.G.R.F. to Electricity Ombudsman, Nagpur. The Ombudsman, vide its order dated 26th April, 2017, quashed and set aside the order dated 03rd September, 2016 passed by C.G.R.F. The M.S.E.D.C.L. was directed to withdraw the bill of Rs.46.93 lacs served on the respondent company and issue final bill after deducting security deposit etc. as per the provisions of Maharashtra Electricity Regulatory Commission Regulations, 2006 ("M.E.R.C. Regulations"). This order is under challenge in Writ Petition No. 7 of 2018.

7. Since the electricity supply of Consumer No. 491000043111 was discontinued on 28th January, 2016 and as both the connections were availed by the respondent company, the M.S.E.D.C.L. issued notice dated 23rd June, 2016 calling upon the respondent company to pay sum of Rs.50,12,490/-, lest electricity supply of Consumer No. 491000053591 would be discontinued. As such, the M.S.E.D.C.L. transferred the bill amount due from Consumer No. 491000043111 to Consumer No. 49100053591. The respondent company challenged the said notice before C.G.R.F. It was however, unsuccessful. It,

therefore, preferred Representation No. 54 of 2016 there against to the Electricity Ombudsman, Nagpur. Vide order dated 27th April, 2017, the Ombudsman set aside the order passed by C.G.R.F. It directed the M.S.E.D.C.L. to withdraw the transferred bill of Rs.46.93 lacs (raised on industrial Consumer No. 491000043111) and subsequently on commercial Consumer No. 491000053591. The M.S.E.D.C.L. was further directed to adjust the amount of Rs.5 lacs paid by the respondent company and not to disconnect its supply on this count, as per the interim order dated 29th September, 2016 passed by Ombudsman. The aforesaid order dated 27th April, 2017 is under challenge in Writ Petition No. 13 of 2018.

8. Mr. Avishkar S. Shelke, learned counsel for the M.S.E.D.C.L. would submit that the C.G.R.F. did not have jurisdiction to entertain both the complaints. The Ombudsman necessarily did not have jurisdiction to entertain and try the representation made by the respondent company against the decisions given by the C.G.R.F. According to him, the respondent company unauthorisedly used electricity. The same was found during spot inspection made by the flying squad. The representative of the respondent company was present at that time. Copies of spot inspection report, panchanama and allied documents were supplied to him. A provisional assessment bill was prepared on the basis of spot inspection report. It was served on the respondent company. Instead of responding to the provisional

assessment bill, it rushed to the C.G.R.F. According to learned counsel, the orders impugned in both the writ petitions suffer for want of jurisdiction, and therefore, liable to be set aside. In the alternative, the learned counsel urged for remanding of the matter to take the proceedings under Section 126 of the Act to its logical conclusion.

9. Mr. Sant, learned counsel for the respondent company would, on the other hand, submit that no final assessment bill had ever been served on the respondent company. The officials of M.S.E.D.C.L. were, time and again, requested to give the respondent company an opportunity of hearing as against the provisional assessment. Remedy of appeal under Section 127 of the Act is available against the final order passed under Section 126 of the Act. It had, therefore, no option but rush to C.G.R.F. Learned counsel placed on record his written submissions.

10. Part XII of the Act speaks of investigation and enforcement. Sections 126 and 127 of the Act read as under :-

“126. Assessment.-

1. If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised 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.

2. The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

3. The person, on whom an order has been served under subsection (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

4.

5.

6.

Explanation:- For the purposes of this section,--

a.

b. "unauthorised use of electricity" means the usage of electricity--

i.

ii.

iii.

iv. for the purpose other than for which the usage of electricity was Authorized ; or

v.

127. Appeal to appellate authority.-

1. Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

11. Both the authorities viz. C.G.R.F. and Ombudsman have concurrently held that the respondent company had not been given an opportunity of hearing against provisional assessment bill. On examination of the papers on record, this Court has no reason to take different view. As such, there is breach of mandatory provision of Section 126(3) of the Act. Reading of Section 127 of the Act would suggest that remedy of appeal is provided against the final order passed under Section 126 of the Act. Both the authorities have found that no final assessment bill had ever been served on the respondent company. It was in the proceeding before C.G.R.F. the final assessment bill bearing no date, no official seal, no name of the authority issuing the same with its designation was produced.

12. So far as regards question of jurisdiction of C.G.R.F. is concerned, it may be stated that M.S.E.D.C.L. did not raise issue of jurisdiction before C.G.R.F. and Ombudsmen as well. Regulation 6.8 of the M.E.R.C. (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 reads as under :-

“6. Procedure for Grievance Redressal.

....

6.8 If the Forum is prima facie of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum:

(a) unauthorized use of electricity as provided under section 126 of the Act;

(2) (b) offences and penalties as provided under sections 135 to 139 of the Act;

(c) accident in the distribution, supply or use of electricity as provided under section 161 of the Act; and

(d) recovery of arrears where the bill amount is not disputed.”

13. In view of the above provision, if the forum is prima facie of the view that the grievance referred to it falls within purview of any of the aforesaid clauses (a) to (d), then the same shall be excluded from its jurisdiction. So far as regards the grievance made by the respondent company as against the issue of notice dated 23rd June, 2016 for discontinuation of electricity supply and transfer of bill from discontinued industrial Consumer No. 491000043111 to commercial Consumer No. 491000053591, is concerned, it is to be stated that C.G.R.F. itself has jurisdiction to entertain the same. At the cost of repetition it is to be stated that the issue of jurisdiction of C.G.R.F. was not raised before the very forum and then before the Ombudsman as well. Moreover, when the so called provisional assessment bill was issued without granting the respondent company an opportunity of hearing there against, the respondent company was justified in approaching C.G.R.F.

14. Both the provisional assessment bill and final bill as well have been in breach of provisions of Section 126 of the Act. Public money is involved. The order impugned in Writ Petition No. 7 of 2018, therefore,

deserves to be set aside. There is however, no reason to interfere with the order impugned in Writ Petition No. 13 of 2018. Both the writ petitions are, therefore disposed of in terms of following order :-

ORDER

- (I) Writ Petition No. 7 of 2018 is allowed in terms of prayer clause (C).
- (II) The petitioner – M.S.E.D.C.L. shall issue final assessment bill after giving the respondent company a reasonable opportunity of hearing against the provisional assessment bill.
- (III) Rule is made absolute.
- (IV) Writ Petition No. 13 of 2018 stands dismissed. Rule is discharged.

(R.G. AVACHAT, J.)

SSD