IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10669 OF 2016

Maharashtra State Electricity
Distribution Company Ltd. & another …PETITIONERS

VERSUS

B.G. Shirke Construction
Technology Pvt. Ltd. ...RESPONDENT

....
Shri S.V. Mundhe, Advocate with
Shri Avishkar S. Shelke, Advocate for petitioners
Shri K.C. Sant, Advocate for respondent
....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 31st January, 2021
Date of pronouncing order : 23rd February, 2021

O R D E R :

The challenge in this Writ Petition is to the order dated 13/5/2016, passed by the appellate authority in appeal (No.1/2015) under Section 127 of the Electricity Act, 2003. By the impugned order, the final assessment bill of Rs.36,04,292/- dated 14/5/2015 has been quashed and set aside with a direction to issue a fresh bill comprising of difference between LT-VB Industrial and LT-II B commercial without any penalty interest. It has further been directed to adjust the amount of Rs.18,02,146/- paid by the appellant therein (respondent herein) on 16/6/2015 against the fresh bill to be issued.

2. The petitioner No.1 is Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) and petitioner No.2 is its official. The sole respondent is a private limited Company, engaged in the business of building and construction.

3. The MSEDCL provided the respondent Company electricity supply under 'industrial' category on 5/5/2013. The flying squad of the MSEDCL paid a surprise visit to the premises of the respondent Company on 5/9/2014 and checked the installation of electricity supply. It was found that, electricity supplied for industrial purpose was being utilised for commercial activities, namely construction of apartments of Maharashtra Housing and Area Development Authority (MHADA). The tariff for industrial supply is lesser than the tariff for commercial supply. The flying squad prepared spot inspection report in the presence of a representative of the respondent Company. A copy of the inspection report was given to him. The electricity charges

paid by the respondent Company came to be assessed. The provisional assessment bill amounting to Rs.36,04,291/- was served upon the respondent Company. The provisional assessment bill was objected to on the ground of having not been in accordance with the rules. After giving the respondent Company a reasonable opportunity of hearing against the provisional assessment bill, a final assessment bill came to be issued in terms of the provisional assessment bill itself. The respondent Company, therefore, preferred appeal under Section 127 of the Electricity Act. The appellate authority allowed the appeal, setting aside the final assessment bill. Aggrieved thereby, the MSEDCL has preferred this Writ Petition.

4. Mr. S.V. Mundhe, learned counsel for the petitioners MSEDCL would submit that, the respondent company had withdrawn its claim of being industry before the appellate Court. As such, it has admitted that, electricity was being used for commercial purpose. No serious objections were raised against the provisional assessment bill. The respondent Company, therefore, could not have been allowed to take exception to the final bill on other grounds. The learned counsel would further submit that, the order passed

by the appellate authority is illegal per-se and, therefore, liable to be set aside.

5. Mr. K.C. Sant, learned counsel for the respondent Company would, on the other hand, submit that the appellate authority has not committed any mistake in passing the impugned order. The petition is not maintainable since the questions of facts were only involved in the proceedings before the appellate authority. The appellate authority was none other than an officer of the MSEDCL. The electricity was supplied for industrial activities. The respondent Company though engaged in construction activity, it manufactures bricks, columns, Chhajas. The electricity was utilised for industrial activities only. The respondent Company holds a certificate issued by District Industrial Centre. The respondent Company had obtained another connection for supply of electricity for commercial purchase. It was Consumer No.490110107649. It was subsequently discontinued. The provisional assessment bill was issued without giving sufficient particulars. The bill could have been issued at the most for a period of not more than 12 months preceding the date of inspection. The bill has, however, been issued for the entire period i.e. from the date of installation of

the meter to the date of surprise visit by the flying squad. It was bonafide mistake on the part of the respondent Company to ask for the change of a tariff from Rs.10.91 to Rs.8.44 per unit. The final bill ought to have been issued within 30 days of issuance of provisional assessment bill. There is breach of provisions of Section 126 of the Electricity Act. The bill has not been issued in a prescribed format. The appellate authority was, therefore, justified in setting aside the final bill. The respondent Company had agreed to settle the matter without payment of penalty and interest. It was ready to pay the difference between industrial and commercial tariff. Reliance has been placed on Commercial Circular No.200 dated 5/7/2013 to submit that the provisional assessment bill ought to have been served not later than seven days from the date of inspection. A copy of the appeal memo has also been placed on record to submit that the final assessment bill had been taken exception to on several grounds. The learned counsel has relied on the following authorities :

(1) Maharashtra State Electricity Distribution company Limited, Pune Vs. Mahindra Life Space Developers Limited, Pune [2018 AIR CC 3197 (Bom.)]

(2) Executive Engineer and anr. Vs. M/s Sri Seetaram Rice Mill [2012 AIR SW 616]

6. Section 126 of the Electricity Act reads thus :

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 unauthorized use of electricity, he shall provisionally assess to the best of his judgement 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 sub- section (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) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services

specified in sub-section (5).

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 authorised; or

(v) . . . .

7. The respondent Company had been supplied electricity for industrial purpose on 5/5/2013. The flying squad of the MSEDCL paid surprise visit to the construction site of MHADA and found that the electricity supply to the respondent Company was being used for construction activity. An inspection report was drawn on the spot. A copy thereof was admittedly served to a representative of the respondent Company. The application moved by the respondent Company for supply of electricity is on record. It had asked for 51 KVA supply. The application was accompanied by proposed connected load list. It was of 51 KVA. The flying squad also found that the connected load was 51.88 KVA. A

provisional assessment bill for the period from installation of the connection to the date of the surprise visit was supplied to the respondent Company. It did not raise objection to the said bail on the ground of having not been issued in a prescribed format, with break-up and within seven days of the spot inspection. The respondent Company could not, therefore, be allowed to raise these grounds in this petition. Reliance on the judgment of Mahindra Life Space Developers (supra) would, therefore, be of no assistance to the respondent Company.

8. On receipt of the provisional assessment bill, the respondent Company made a communication dated 23/1/2015 taking exception thereto on the ground of the bill having been issued for the entire period. According to the respondent Company, the provisional assessment bill ought to have been for a period not more than six months next before the day of flying squad visit. In the second communication dated 31/1/2015, it claimed that the load at the site was less than 50 KVA and, therefore, the rate should have been Rs.8.44 instead of Rs.10.91 per unit. The respondent Company was given an opportunity of hearing against the provisional assessment bill. The provisional assessment bill

was dated 26/12/2014. The respondent Company, vide its communication dated 23/1/2015 and 31/1/2015, had raised objections to the provisional assessment bill. The final assessment bill, therefore, could not be issued within 30 days from the date of service of provisional assessment bill.

9. Since the respondent Company raised objection to the provisional assessment bill only on the grounds of its period and per unit charges, the final assessment bill came to be issued in conformity with the provisional assessment. The respondent Company challenged the final assessment bill in appeal before the appellate authority. The bill was challenged on number of grounds. The provisional assessment bill has not been taken exception to on the ground of the electricity being used for industrial activity. Before the appellate authority, the respondent Company had raised said ground, but withdrew the same. As such, it could not be heard to say that the electricity was being used for industrial purpose. The MSEDCL was, therefore, justified in issuing the bill from the dye one of the electricity supply to the date of spot inspection. (i.e. for about 20 months).

10. So far as regards claim in respect of the

connected load being less than 51 KVA, it has to be stated that the respondent Company itself had applied for 51 KVA load. It gave the details of proposed connected load. The flying squad found the connected load to have been little over 51 KVA. The MSEDCL was, therefore, justified in issuing the final assessment bill for the period from the date of supply of electricity to the date of detection of unauthorized user along with necessary penalty, interest and double the rate/ tariff. The appellate authority ought not to have allowed the appeal setting aside the final assessment bill on the ground of the provisional and final assessment bills having not been issued in format. The appellate authority had concluded that there was no dispute about the meter and assessed units. It further found the MSEDCL to have failed to process/ verify and sanction the new service connection in correct manner. The appellate authority had in fact a very little or no scope to interfere with the final assessment bill since the respondent Company had withdrawn its claim being industry. It had been supplied with 51 KVA load of electricity on its demand. As such, the order of the appellate authority is found to be perverse one. The impugned order, therefore, deserves to be set aside in exercise of jurisdiction under Article 227 of the Constitution of India.

11. The writ petition, therefore, succeeds. The impugned order is set aside. The respondent Company shall be liable to pay the MSEDCL the amount under the final assessment bill.

(R. G. AVACHAT)
JUDGE

fmp/-