IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.21 OF 2017
WITH
WRIT PETITION NO.41 OF 2017

WRIT PETITION NO.21 OF 2017

Maharashtra State Electricity Distribution
Company Limited – Through its Deputy
Executive Engineer (Flying Squad),
Vidyut Bhavan, Ratanlal Plots,
O & M Sub-Division No.3,
Akola. .. Petitioner

.. Versus ..

1] Radhakisan Toshniwal Ayurved College,
Through its Principal – Shri Kishore
Moreshwar Pimparkar,
Aged about 55 years,
Resident of Jatharpeth, Kediya Plots,
Akola-444 005;

2] The Appellate Authority – Superintending
Engineer, Office of the Superintending
Engineer (Electrical), Nagpur Region,
Electrical Inspection Circle,
Industries Energy & Labour Department,
Ramkrishna Nagar, Near UCO Bank,
Ajni Square, Wardha Road,
Nagpur-440 015. .. Respondents

……….

Shri S.V. Purohit, Advocate for the petitioner,
Shri Zeeshan Z. Haq, Advocate for respondent no.1,
Shri K.L. Dharmadhikari, AGP for respondent no.2.

……….

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Shri Zeeshan Z. Haq, Advocate for respondent no.1,
Ms M.A. Barabde, AGP for respondent no.2.

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CORAM : N.B. SURYAWANSHI, J.

RESERVED ON : 18.08.2021.

PRONOUNCED ON : 27.08.2021.

COMMON JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard by the consent of the parties.

2. Since common question of law and fact is involved in both these petitions, they are heard together and are being decided by this common judgment. For the sake of convenience, the fact of Writ Petition No.21/2017 is taken up for consideration.

3. This petition filed under Articles 226 and 227 of the Constitution of India challenges the order dated 22/12/2015 passed by Appellate Authority (R-2) by exercising powers under section 127 of the Electricity Act, 2003 (for short 'Act of 2003'). The appellate authority quashed and set aside the bill issued to the Respondent No. 1-College for the sum of Rs 1,58,240/-.

4. The Respondent No.1-College had taken an electricity connection under industrial purpose category for manufacturing Ayurvedic Medicines on 17/04/1968. Over a period of time, Respondent No.1 changed its use without intimating the same to the then MSEB and started utilising the electricity supply for its hospital, situated in the same campus. On 3/11/2011, the petitioner

MSEDCL's flying squad visited the Respondent No.1's premises for surprise inspection. At that time, the Principal of the college was present. In his presence, they conducted the inspection. During the inspection, it was found that the service connection given to the Respondent No.1 bearing consumer No.310070426853 given to the Respondent No.1 on 17/04/1968 under the industrial category, with the sanctioned load of 10 HP, was being used for running Ayurvedic Hospital. It was further noticed that no production activity was going on with the help of electricity being supplied to the Respondent No.1-College, by applying industrial tariff. The spot inspection report was therefore prepared in the presence of the Principal, who was apprised of the irregularities found by the flying squad during the course of inspection. The Principal admitted and accepted the irregularities and, therefore in token thereof signed the spot inspection report dated 3/11/2011. The copy of inspection report was given to the Principal. The flying squad proposed that LT-ll commercial tariff should be applied to the Respondent No.1-College.

5. Pursuant to the spot inspection report, the office of petitioner prepared the assessment sheet and calculated the tariff difference between commercial and industrial tariff. The assessment was done for 27 months i.e. for the period between August-2009 to

October-2011. The tariff difference was worked out to Rs.1,58,240/-. Accordingly, the demand of this amount was made by showing in the bill for December-2011 by showing outstanding amount of Rs.1,58,240/-, which was forwarded to the college through registered post.

6. Respondent No.1 challenged the said bill by approaching District Consumer Forum, Akola, which refused to entertain the complaint for want of jurisdiction.

7. The Respondent No.1 thereafter filed appeal under section 127 of the Electricity Act, 2003 before the Respondent No.2-Appellate Authority, praying for setting aside the arrears of Rs.1,58,240/- and cancellation of bill. The petitioner resisted the appeal on the ground of limitation and further contended that only difference amount was claimed by the petitioner and no penal charges are levied on the Respondent No.1. The Respondent No.2 allowed the appeal. The appellate order is impugned in the present petition.

8. Heard the learned Advocate for the petitioner, the learned Advocate for the respondent no.1 and the learned Assistant Government Pleader for the respondent no.2.

9. The learned Advocate for the petitioner submitted that the appeal filed by the Respondent No.1 was hopelessly barred by limitation, as the same was filed belatedly after 3 years, when the limitation to file appeal under Section 127 of the Act of 2003 is 30 days. No delay condonation application was filed. He further submitted that since the appellate authority has held that the case of the Respondent No.1 did not fall under Section 126 of the Act of 2003, the Respondent No.2 could not have exercised jurisdiction to entertain the appeal. Therefore, the appeal filed by the Respondent No.1 under Section 127 of the Act of 2003 was not maintainable. According to him, the respondent Nos.1 ought to have approached the Consumer Grievance Redressal Cell (CGRC**).** He further submitted that since only difference charges were demanded from the Respondent No.1, his case does not fall under Section 126 of the Act of 2003. By placing reliance on the tariff scheme annexed along with the petition, he submitted that for hospitals, education institutions and dispensaries, commercial charges are applicable. Taking into consideration the fact that at the time of spot inspection, no manufacturing activity was noticed and since the electricity supply was being used for hospital, the Respondent No.1 was liable to pay the charges, as per commercial rate and not as per industrial

rate. According to him, the Respondent No.2 has erroneously exercised jurisdiction and has recorded incorrect findings, therefore, the impugned order is liable to be quashed and set aside. In support of his submission, he relied upon the decision of the Hon'ble Supreme Court in *Assistant Engineer (DJ), Ajmer Vidyut Vitran Nigam Limited and another .vs. Rahamatullah Khan alias Rahamjulla, (2020) 4 Supreme Court cases 650*.

10. On the other hand, the learned Advocate for the Respondent No.1 did not dispute the signature of the Principal on the inspection report. He submitted that the inspection was done under Section 126 of the Act of 2003. Under Section 126 (2) the assessment order has to be served upon the person in occupation or possession or in charge of the place or premises in the prescribed manner, no such order was served on the Principal. According to him, the petitioner issued bill for the month of December-2011 on 17/01/2012, wherein huge outstanding amount of Rs 1,58,240/- is demanded from the respondent No.1. No details are given, as to how, the said amount was calculated and for which period, the said amount was claimed. Therefore, after receiving the bill, the Respondent No.1 immediately filed complaint with the petitioner on 6/02/2012. Since there was no response to the said complaint, the

Respondent No.1 approached the Consumer Forum, Akola and after that filed the present appeal. Therefore, according to him, there was no delay on the part of the Respondent No.1 in filing the appeal. He further submitted that no opportunity was given to the Respondent No.1 to show that it was not using the electricity supply for commercial purpose and was using it for industrial purpose. There is no material on record, except the spot inspection report, to show that for what purpose the electricity supply from the said meter was being used. His further submission is that they could not have charged the difference amount for 27 months and at the most, it could be charged for 12 months in accordance with section 126 (5) of the Act of 2003. He supported the impugned order and stating that for contravening the provisions of Section 126 of the Act of 2003, the action of the petitioner of claiming the difference charges is unsustainable. He therefore submitted that both the petitions deserve to be dismissed.

11. The learned Assistant Government Pleader supported the impugned order.

12. For considering the rival submissions, it would be apt to reproduce the relevant provisions.

13. The Electricity Act, 2003

Section 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 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 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) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(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 applicable for the relevant category of services specified in sub-section (5).

Section 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.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to [half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of

sixteen per cent, per annum compounded every six months.

14. It is not in dispute that the respondent no.1 was granted electricity supply for manufacturing the Ayurvedic Medicines under the industrial category in the year 1968. The surprise inspection of respondent no.1-college was conducted on 3.11.2011 by the flying squad of the petitioner. In the inspection, it was found that the electricity supply given under the industrial category was being used by the respondent no.1 for Ayurvedic Hospital. No activity of manufacturing Ayurvedic Medicines was found there. It is admitted that the inspection was conducted in the presence of Principal of respondent no.1-college, who has signed the inspection report. There is a stamp of Superintendent, Ayurvedic College, Akola on the inspection report.

15. The petitioner has power to recover the electricity charges under Section 45 of the Act of 2003. Section 56 (2) of the Act of 2003 authorizes the petitioner to disconnect supply in default of payment of electricity charges. Under the regulation 3.4 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, the Distribution Licensee is authorized to recover charges for electricity

supplied in accordance with such tariffs as may be fixed from time to time by the Commission.

16. In the bill issued to the respondent no.1 for the month of December-2011 on 17.1.2012, the difference amount of Rs.1,58,240/- was shown outstanding. Admittedly, at the time of spot inspection, no provisional assessment order was served on the respondent no.1-college. The assessment appears to have been done subsequently and thereafter the demand was raised. Since the petitioner has claimed only the difference amount and has not charged twice, the tariff applicable for the relevant categories of services, in accordance with sub-section 6 of Section 126 of the Act of 2003, the assessment cannot be said to be made under Section 126 of the Act of 2003.

17. The case of the respondent no.1-college does not fall under Section 126 of the Act of 2003. It proceeded to allow the appeal filed under Section 127 of the Act of 2003. Appeal under Section 127 of the Act of 2003 is maintainable by a person aggrieved by a final order made under Section 126 of the Act. Since the difference amount claimed by the petitioner cannot be said to be an assessment made under Section 126 of the Act of 2003, the Tribunal

has no jurisdiction to entertain the appeal filed by the respondent no.1-college.

18. In *Assistant Engineer (DJ), Ajmer Vidyut Vitran Nigam Limited and another* (supra), by taking into consideration the provisions of Section 56 (1) of the Act of 2003, the Hon'ble Supreme Court held that the liability to pay arises on the consumption of electricity and the obligation to pay would arise when the bill is issued by the licensee company, qualifying the charges to be paid. It was thus held that additional demand can be raised by the company. Thus, electricity charges would become 'first due' only after the bill is issued to the consumer. Para Nos.8 and 9, as under :

> ***"8.*** *Section 56 (2), however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.*
>
> ***9.*** *Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.3.2014 for the period July, 2009 to September, 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.3.2014. The limitation period of two years under Section 56 (2) had by then already expired."*

In the light of the observations of the Hon'ble Supreme Court, it can be held that in the present case, the petitioner was entitled to recover difference charges/additional charges from the Respondent No.1-College. The impugned order is based upon erroneous reasoning and the same is therefore unsustainable.

19. For the aforestated reasons, both the writ petitions deserve to be allowed and the same are hereby **allowed.**

(i) The impugned order passed by the respondent no.2 in appeal preferred by respondent no.1-college, is hereby quashed and set aside.

(ii) Liberty is granted to the respondent no.1-college to approach the appropriate forum constituted under the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006.

(iii) If the respondent no.1-college files proceeding before the appropriate forum, it shall decide the same on its own merit and without influence by the observations made hereinabove.

Rule is made absolute in the above terms with no order as to costs.

(N.B. Suryawanshi, J.)

Gulande