Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2474 OF 2017

Suraj Hiraman Jagtap ...Petitioner

Versus

Maharashtra Electricity Regulatory Commission, Government Authority & Ors ...Respondents

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Mr Govind B Pawar, *for the Petitioner.*
Mr Abhay L Patki, Addl GP, *for the Respondent-State.*
Mr Aseem Naphade, *with Heena Shaikh, i/b MV Kini & Co, for Respondent No. 3 (BES&T).*

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 11th November 2022

PC:-

1. Heard. There are several Affidavits up to the stage of rejoinder.

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2. The Petition assails a provisional assessment order dated 20th March 2017 issued by 3rd Respondent, the BES&T Undertaking, and a revised assessment notice dated 26th April 2017. As regards the first, i.e., the assessment notice dated 20th March 2017, that was the subject matter of an earlier Writ Petition (L) No. 866 of 2017 filed by the Petitioner. On 5th April 2017, a Division Bench of this Court, on production, found that the Petitioner had a remedy under Section 126 of the Electricity Act 2003 including a right of appeal under Section 127. On this basis, the earlier Petition was dismissed.

3. To begin with, we do not see how the same notice can be once again challenged in a fresh Writ Petition in this fashion.

4. Having said that, it appears to us from the facts that are now on record that there are two distinct classes of challenge. The first relates to a period prior to 2017 and relates to allegedly unpaid bills raised by the BES&T. In that regard, the Affidavit in Reply indicates that the Petitioner had moved the Consumer Grievance Redressal Forum constituted under Section42(5) of the Electricity Act. That application failed. Section 42(6) makes it clear that an appeal lies against any order of the CGRF to the Electricity Ombudsman.

5. The second category of challenge relates to the period after 2017. There are seriously disputed questions of fact in this regard. On the one hand, the BES&T claims that this is case of theft of electricity because the Petitioner allegedly took a direct connection bypassing the electricity meter. This is entirely disputed by the Petitioner, who says that there was never a direct connection and that it was the BES&T which removed the meter. The BES&T's own meter was, the Petitioner claims, faulty and the Petitioner cannot be held liable in this regard.

6. In the present Writ Petition, a Division Bench passed the following order on 12th May 2017:

1. By this Writ Petition the petitioner challenges provisional assessment in respect of electricity supply to Room No. 7/139, Manabai Sadan, Govindji Kini Road, Naigaon, Dadar (East), Mumbai-400 014. **It appears that the electricity supply has been disconnected for non payment of Bills and due to alleged theft of electricity**.

2. Pursuant to a vigilance enquiry an amount of Rs.1,48,802/- was demanded from the petitioner. This amount came to be later revised to Rs.1,00,785/- as evident from the revised assessment order dated 26th April, 2017. In the meantime the petitioner paid a sum of Rs.75000/- on 21st April, 2017 in respect of the said Vigilance case No. V N-0259 D17 thus leaving a balance of Rs.25,785/- .

3. Today learned Counsel for the petitioner states that he is willing to pay the balance of Rs.25,785/- unconditionally within one week from today. As against this learned Counsel for the undertaking states that quite apart from the claim under the vigilance case there is a further demand pending in a sum of Rs.37,553/- which remains unpaid as of March, 2015.

4. She further submits that interest on the said amount has mounted and total amount due under the said claim would reach approximately Rs.1,00,000/-. On a query from the Court she is unable to support the quantification with any document. At this stage, the learned Counsel for the petitioner states that he is willing to deposit the sum of Rs.37,553/- in this court also within a period of one week from today.

5. Accordingly, the following order is passed:

   (a) The petitioner is directed to pay to the third respondent sum of Rs. 25,785/- on or before 18th May, 2017.

   (b) The petitioner will deposit in this Hon'ble

> Court in the office of the Prothonotary and Senior Master a sum of Rs.37,553/- also on or before 18th March, 2017 by pay order.
>
> (c) Upon payment of the aforesaid sum of Rs.25,785/- and deposit of Rs. 37,553/- as aforesaid respondent no. 3 will reconnect the electricity supply within 24 hours to Consumer No. 585-219-025 at the aforesaid Room No. 7/139, Manabai Sadan, Govindji Kini Road, Naigaon, Dadar (East), Mumbai-400 014.
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> 6. Stand over to 15th June, 2017.

(*Emphasis added*)

7. We also find from the record that the Petitioner has filed an Appeal under Section 127 in regard to the first provisional assessment notice dated 28th March 2017. It seems to us clear that the Petitioner has an effective alternate remedy under Section 126 of the Electricity Act in regard to the revised assessment notice dated 26th April 2017.

8. Although we are mindful of the seriously disputed questions of fact, we do not propose to simpliciter dismiss this Petition on that ground or even on the ground that there are alternate remedies. That may unfairly prejudice the Petitioner, who is, after all, seeking an adjudication on merits. Therefore, we will instead grant the Petitioner liberty to file an appropriate appeal against the CGRF order before the Ombudsman under Section 42(6) as also to avail of all remedies under Section 126 and Section 127 of the Electricity Act on both aspects of the matter.

9. We specifically keep open all contentions of both sides.

10. We are also concerned that about the time spent by the Petitioner in prosecuting the present Petition. It was filed in 2017, and five years have passed since. The Petitioner cannot be held responsible for this delay. We exercise our equitable discretion in that regard and condone the delay, including for the purposes of limitation. This means that the authorities that are considering any application or Appeal filed by the Petitioner whether under Section 42(6) or under Sections 126 or 127 will not decide against the Petitioner only on the ground of delay or limitation. We say so because it seems to us clear that the Petitioner has been prosecuting the present Petition in this Court and cannot be held responsible for this passage of time.

11. Mr Pawar, learned counsel for the Petitioner, makes a statement on instructions from the wife of the Petitioner who is present in Court that the necessary appeals/applications will be made before the appropriate authorities within eight weeks form today. We accept that statement. We request the authorities concern to dispose of the Petitioner's appeals/applications as expeditiously as possible, and, in any event, within six months of those appeals/applications being filed. If there is any Appeal that is presently pending, that is also to be disposed of within six months from today.

12. As regards the amount deposited in this Court, that deposit will continue and will be subject to orders of the appropriate authority/Appellate Authority. The Petitioner's argument that there is an over-payment to the BES&T is also noted and may be taken in any appropriate proceeding. If there is an order of payment against the Petitioner, the Petitioner will be entitled to claim an adjustment in relation to the amount deposited in this Court.

13. The Petition is disposed of in these terms.

(Gauri Godse, J) **(G. S. Patel, J)**