



W.P(MD).No.3581 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.3581 of 2014

and

M.P(MD) No.1 of 2014

K.Subramanian

... Petitioner

-VS-

1. The Executive Engineer/ Operation,
230 KV-Sub Station,
Pugalur,
Karur Taluk,
Karur District.
2. The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Generation and Distribution
Corporation Limited (North),
Karur.

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Lr.No.EE/O/PGR/F.doc/D.No.394/2013, dated 13.11.2013



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and quash the same and consequently directing the first respondent to take the appeal preferred by the petitioner on file and dispose off the same on merits.

For Petitioner : Mr.K.Suresh

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present Writ Petition has been filed challenging the order passed by the Appellate Authority, under which, he has refused to entertain an appeal on the ground that the appeal has been filed with a delay.

2. According to the learned counsel for the petitioner, the petitioner suffered a Final Assessment Order arising out of Section 126 of the Electricity Act, on 22.06.2013. The said order was served upon him, on 05.07.2013. On misunderstanding, the petitioner had filed an Appeal before the Electricity Ombudsman, Chennai, on 03.08.2013 and the same was returned by the Electricity Ombudsman, on 06.08.2013. Thereafter, the petitioner has presented the Appeal before the first respondent herein, on 13.08.2013.



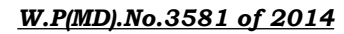
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3. According to the learned Counsel for the petitioner, the first respondent has refused to entertain the Appeal on the ground that the Appeal has been presented after lapse of forty (40) days. The Appeal has to be presented within a period of 30 days from the date of Final Assessment Order, as contemplated under Section 127 of the Electricity Act. This order is under challenge in the present Writ Petition.

4. According to the learned Counsel for the petitioner, the Final Assessment Order was served only on 05.07.2013 and by mistake, the Appeal was presented before the Electricity Ombudsman and as soon as it was returned by the said Electricity Ombudsman, it was presented to the first respondent herein on 13.08.2013 and hence, the delay is just four days in presenting the Appeal. However, the first respondent has taken into consideration, and calculated the limitation from the date of passing of the Final Assessment Order arriving at a delay of 40 days.

5. He further contended that the delay is neither wilful nor wanton, but it is only due to circumstances as stated above. He further contended that there is no prohibition under Section 127 of the Electricity Act to



6. Per contra, the learned Standing Counsel appearing for the respondents had contended that there is no provision under Section 127 of Electricity Act, enabling the authorities to condone the delay and hence, the first respondent was right in refusing to entertain the Appeal which was filed beyond a period of thirty days.

8. Admittedly, the petitioner has presented the Appeal before the first respondent herein under Section 127 of the Electricity Act beyond a period of thirty days. The Authority has refused to entertain the appeal on the ground that the Electricity Act, as a special law, provides for limitation of thirty days and there is no power conferred upon him to condone the delay when the appeal was presented beyond a period of thirty days.



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9. Section 29 of the Limitation Act, is extracted as follows:-

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

10. Whereas a special law provides for period of limitation other than the period i.e., mentioned in the Limitation Act. The parties are entitled to invoke Sections 4 to 24 of the Limitation Act (including Section 5 of the Limitation Act), in case, if there is no specific prohibition under the special enactment to condone the delay.



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11. In the present case, as rightly contended by the learned Counsel for the petitioner, there is no specific prohibition on the first respondent to condone the delay when the appeal is presented beyond a period of limitation. Hence, it is clear that in view of Section 24 of the Limitation Act, the petitioner is entitled to invoke Section 5 of the Limitation Act, to make out a case for condonation of delay.

12. In the present case, I find that he has presented the appeal before a wrong forum which was returned on 06.08.2013. Within a period of one week from the return of the said appeal on 13.08.2013, the petitioner has presented the appeal before the first respondent herein. Hence, I find that the petitioner has made out sufficient cause for condoning the delay. When the petitioner has made out a sufficient cause, the delay in presenting the said appeal before the first respondent herein is condoned and the first respondent is directed to entertain the appeal and pass orders on merits and in accordance with law, after giving due opportunity to the writ petitioner.



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13. With the above said observation, this Writ Petition stands allowed.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Internet : Yes / No
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R.VIJAYAKUMAR,J.

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