

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.89 OF 2020
WITH
CIVIL APPLICATION NO.14 OF 2020
IN
WRIT PETITION NO.89 OF 2020**

- 1 The Chief Electrical Engineer, Electricity Department, Government of Goa, Vidyut Bhavan, Panaji, Goa.
- 2 The Executive Engineer, Electricity Department Div.VII, Curchorem, Goa.
- 3 The Assistant Engineer, Electricity Department Div. VII,Sub-Div.III,Sanguem, Goa. ... Petitioners

Versus

- 1 Shantanu Narayan Dessai, ... Respondent
52/1, Alto Chicalim, Vasco, Goa.

Mr Pravin Faldessai,, Additional Government Advocate for the petitioners.

Mr S.S. Kantak, Senior Advocate with Mr. Preetam Talaulikar and Ms Neha Kholkar, Advocates for the respondent.

CORAM:	BHARAT P. DESHPANDE,J.
RESERVED ON:	20 th July, 2023.
PRONOUNCED ON:	27 th July, 2023.

JUDGMENT:

1. Rule. Rule is made returnable forthwith.
2. This matter was taken up for final disposal at the admission stage itself with consent of the parties.

3. Heard Mr Pravin Faldessai, learned Additional Government Advocate for the petitioners and Mr S.S. Kantak, learned Senior Advocate with Mr. Preetam Talaulikar and Ms Neha Kholkar, learned Counsel for the respondent.

4. The petitioners are challenging the orders dated 12/06/2017 and 18/09/2017 passed by the Consumer Grievance Redressal Forum, Vasco in complaint/representation filed by the respondent and review order passed by the petitioner.

5. The petitioners claimed that on 24/05/2016 its Junior Engineer carried out site inspection in the farm house at Jaquem, Netravali and found that respondent was unauthorisedly using power supply from the LTAG connection which is standing in the name of one Satyajit R. Prabhu for the purpose of construction of his farm house and cattle shed. The electricity supply was disconnected on the very same day as it was found to be unauthorisedly used. The Sub-Divisional Engineer made initial assessment and forwarded it to the registered consumer Mr Satyajit R. Prabhu. However, the respondent approached the office of the petitioner and admitted the liability and agreed to pay the assessed amount of consumption as per the norms. The respondent agreed to make such payment for and on behalf of the registered consumer without any protest. On payment of such assessed amount, the electricity supply was restored since it was found that there were cattle in the said farm.

6. However, the respondent filed a complaint before the Consumer Grievance Redressal Forum which was registered as complaint/representation No.10 of 2017. The said complaint was entertained by the Forum and the contention of the respondent was accepted and the assessment carried out by the Department for the unauthorised use of electricity along with the bill was set aside and the Department was directed to refund the entire amount alongwith interest @8% p.a. within sixty days.

7. Shri Faldessai, learned Additional Public Prosecutor for the petitioners strongly contended that first of all the Forum had no jurisdiction to entertain such a complaint under Section 126 or 135 of the Electricity Act 2003 and Regulations thereunder. It is his contention that the respondent was not a consumer as defined under the Act and the Regulations and therefore such a complaint filed by the third party or not by the consumer ought not to have been entertained. He then submitted that the respondent voluntarily approached the Department when the notice of assessment of unauthorized use of electricity was issued in the name of consumer and voluntarily paid the amount without raising any protest. Since the amount was paid on 25/05/2016, the electricity supply was restored. However, somewhere in the year 2017 a complaint was filed before the Forum by the respondent claiming that assessment carried out by the Department vide notice dated 26/05/2016 of Rs.1,33,020/- for allegedly unauthorisedly using electricity, was illegal and without any basis. Mr Faldessai would then submit that the averments clearly goes to show

that the respondent was not a consumer in April, 2006 when the inspection was carried out and therefore he had no locus to approach the Forum. He then submitted that the order passed by the Forum is without jurisdiction and thus the petition is the only remedy available for the authority.

8. *Per contra*, the learned Senior Counsel Shri Kantak first of all raised a preliminary objection to the maintainability of the petition and claimed that as per regulations appeal/revision is provided and therefore when alternative remedy is available, this Court should refrain from entertaining the petition.

9. Mr. Kantak would then submit that the respondent who was not a consumer has admittedly found using the electricity though the meter was in the name of Mr Prabhu. The assessment carried out by the Department was incorrect and therefore though the respondent paid the said amount under protest, he rightly filed the proceedings before the Forum. He then submitted that the learned Forum also considered that the complaint/application of the respondent is not under Section 126 of the Electricity Act and therefore there is no bar for the Forum to entertain such a complaint. He would therefore submit that the Forum only tested the action on the part of the Department in principle of Section 126.

10. Rival contentions fall for determination as under.

11. Mr Faldessai submitted that the Forum had no jurisdiction to entertain any complaint filed by the respondent under Section 126 of the

said Act for the simple reason that the jurisdiction of the said Forum is restricted in view of the Joint Electricity Regulatory Commission (Establishment of Forum for Redressal of Grievances of Consumers) Regulations 2009. Regulation 2 of the above regulations deals with definition and regulation 2(d) defines “complainant” which include (i) A consumer (ii) A registered consumer society; and (iii) Any unregistered association of consumers having similar interest.

12. Regulation 2(e) defines “complaint” which reads thus”

“Complaint” means an application made by consumer before the forum seeking redressal of any grievance with regard to supply of electricity by the licensee;

Provided that the following shall not be considered as the complaint namely,

(i) any grievances arising out of application of Sections 126,127, 135 to 139, 142, 143, 149, 152 and 161 of the Act;

(ii) any matter pending before, or decided by, any court of law, or authority (except an authority under the control of the licensee) or the Forum, and

(iii) any complaint in regard to recovery of arrears where the billed amount is not disputed”

13. Perusal of the definition of complaint in regulation 2(e) means an application made by consumer before the forum seeking redressal of any grievance with regard to supply of electricity by the licensee. However the proviso clearly restrict as to what should not be considered as a complaint wherein clause (i) satisfy that any grievance arising out of application of

Sections 126,127, 135 to 139, 142, 143, 149, 152 and 161 of the Act shall not be considered as a complaint to the Forum.

14. Section 126 of the Electricity Act 2003 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 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) 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 unauthorised 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 the section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.—For the purposes of this section,—

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity—

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

[(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorised.”

15. The explanation to Section 126 as quoted above and more specifically clause ‘b’ deals with unauthorised use of electricity which means the uses of electricity (i) by any artificial means; or (ii) by a means not authorised by the concerned person or authority or licensee; or (iii) through a tampered meter etc.

16. Admittedly, the complaint/representation filed by the respondent before the Forum is challenging the assessment notice dated 26/05/2016 for recovery of alleged theft of electricity. The inspection was carried out by the Officers of the Electricity Department on 24/05/2016 and it was observed that the tapping electricity directly from the service connection bypassing

the meter was noticed. A total of 6KW load was found bypassed. This aspect is covered under clause 'b' of explanation to Section 126 of the Electricity Act 2006 which says authorised use of electricity by means of not authorised by the concerned person or authorised or licensee or through a tampered meter. Thus Mr Faldessai is justified in pointing out that any grievance falling within ambit of Section 126 of the Act of 2003 is clearly above all the purview and powers of the Forum. Even the provisions of Section 135 of the Act are also taken away from the purview of the Forum and therefore the complaint filed by the respondent before authority/forum was clearly coming under the provisions of Section 126 of the Act.

17. It is clear from the impugned order that even the Forum considered that the complaint is within the provisions of Section 126 of the Act and i.e. why they have quoted above provision in order to find out whether the Officers of the Electricity Department followed such provision together with condition 10 of the Revised Conditions of Supply of Electricity which deals with unauthorised use and theft of electricity. This condition No.10 also refers to Section 126 of the Act of 2003.

18. The learned Senior Counsel Shri Kantak submitted that though the Forum has considered Section 126, the application filed by the respondent was not under the said Section and that the Forum had only considered the provisions of Section 126 for the purpose of ascertaining whether the Officers of the Electricity Department followed the procedure in condition No.10. According to him, the action of the Electricity Department was

tested on the principles of Section 126, however, the impugned order nowhere says that the dispute was under Section 126. I am unable to accept such contentions for a simple reason that any unauthorised use of electricity is covered under Section 126 of the said Act. The inspection carried out by the Officers of the Electricity Department clearly goes to show that there was unauthorised use of electricity by the respondent wherein tapping of electricity directly from the service connection bypassing the meter was found. This amounts to tampering with the meter itself. Therefore, the entire dispute/grievance led before the Forum is covered under Section 126 of the said Act. Accordingly, the Regulations of 2009 by which the Commission/Forum is required to act prohibit entertainment of such complaint/grievance by any consumer under Section 126 of the said Act. It says that any grievance arising out of application under Section 126 was not to be considered as a complaint. If that is so, the very jurisdiction of the Forum to consider any complaint from the consumer under Section 126 of the Act is ousted.

19. Once it is observed that the complaint filed by the respondent is covered under Section 126 of the Act of 2003 and in view of the Regulation of 2009, the Forum is prohibited from entertaining such grievance, the petition must succeed. Preliminary objection to the maintainability of this petition, is therefore stands rejected.

20. Though it has been argued that the respondent is not coming within the category of consumer, there is no need for discussing such aspect as the

grievance/complaint itself could not have been filed before the Forum. In such circumstances, both impugned orders deserved to be quashed and set aside holding that the Forum had no jurisdiction. Accordingly, the petition stands allowed as per prayer clause 'b' which reads thus:

“b. Quash and set aside the impugned order dated 12/06/2017 and 18/09/2017 passed by the learned CGRF in Complaint bearing No.10 of 2017 and 01 of 2017.”

- 21.** Rule is made absolute in the above terms.
- 22.** Pending Civil Application stands disposed of accordingly.

BHARAT P. DESHPANDE, J.

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VISHAL
BHOIR

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