

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13035 OF 2023

Latif Poultry Farm ... Petitioner
versus
The State of Maharashtra and Others ... Respondents

.....

Mr.Mahindra Deshmukh for the Petitioner.

Ms.R.A.Salunkhe, AGP for Respondent No.1-State.

Mr.Rahul Sinha with Mr.Soham Bahadur i/b. DSK Legal for
Respondent Nos.2 and 3.

.....

**CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.**

DATE : 20 DECEMBER 2023

P.C.:

Heard the learned Counsel for the parties.

2. By this petition, the Petitioner has challenged the order/notice dated 10 August 2023 passed by Respondent No.2- Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) which order was passed under the hearing conducted pursuant to the order passed by this Court on 12 July 2023 passed in Writ Petition No. 15061 of 2022.

3. The Petitioner is a registered partnership firm and runs a poultry farm. The Petitioner received a notice on 19 August 2022

issued by Respondent No.2 -MSEDCL that during the inspection they have found that there was a theft of electricity of 214742 units and that the Petitioner is liable to pay Rs.35,77,110/- for theft of electricity under Section 135 of the Electricity Act, 2003 (the Act of 2003). Thereafter, Respondent No.3-Junior Engineer of MSEDCL visited the poultry shed and disconnected the electricity supply.

4. The Petitioner filed a Writ Petition in this Court bearing No. 15061 of 2022 challenging the order/notice dated 19 August 2022 and before the Division Bench, the Petitioner argued that the Petitioner was entitled to seek restoration of the electricity supply and run its unit upon payment of the assessed amount and that amount which was sought to be assessed and recovered from the Petitioner was assessed arbitrarily and the procedure under Section 126 of the Act of 2003 was not followed. The Division Bench referred and analyzed the provisions of Section 126 of the Act of 2003 and the decision of the Hon'ble Supreme Court in the case of *West Bengal State Electricity Distribution Company Limited and Others Vs. Orion Metal Private Limited and Another*¹. After considering the legal position, the Division Bench rejected the stand of the Respondents that the order/notice dated 19 August 2022 was as per rules and regulations framed. It was specifically noted that the Respondents could not establish the amount payable in terms of the order/notice dated 19 August 2022 was assessed by following the provisions of Section 126 of the Act of 2003. Thereafter, the

¹ 2019 DGLS (SC) 1093

Division Bench recorded a finding that the procedure prescribed under Section 126 of the Act of 2003 has not been followed. There was no opportunity to file objections against the provisional assessment. Thereupon, the Division Bench set aside the order/notice dated 19 August 2022 and directed the Respondents to follow the procedure prescribed under Section 126 of the Act of 2003 and pass final orders within a period of three weeks. Since a short time was granted, the Division Bench stated that the request of the Petitioner for restoration of the electricity supply would be considered upon payment of the assessed amount. Thereafter, the order dated 10 August 2023 came to be passed.

5. The learned Counsel for the Petitioner submitted that the order dated 10 August 2023 is in complete breach of the order passed by this Court as what the Respondents have done is only to confirm the earlier order passed and the procedure under Section 126 of the Act 2003 has been bypassed. The learned Counsel for Respondent Nos. 2 and 3 sought to contend that the Respondents have followed the procedure and the opportunity has been given to the Petitioner to raise objections and having noted that the case was of a theft, the authorities have decided that earlier course of action was correct and needs to be confirmed.

6. Section 126 of the Act of 2003 which was directed to be followed by this Court contemplates a provisional assessment. It is

this provisional assessment that was referred to by the Division Bench in paragraph Nos.11 and 12 of the order dated 12 July 2023.

7. The learned Counsel for Respondent Nos. 2 and 3 sought to contend that earlier notices ought to be considered as provisional assessment. However, we find that the actions which the Respondents took prior to 12 July 2023 have been analyzed by the Division Bench to conclude that the procedure under Section 126 of the Act of 2003 was not followed and the Respondents were directed to follow the procedure under Section 126 of the Act of 2003. It is not the case of the Respondents that after 12 July 2023, the procedure under Section 126 (1) of provisional assessment has been followed. The Petitioner is right in contending that the impugned order dated 10 August 2023 is in breach of the order of this Court.

8. In these circumstances, it will not only suffice to direct the Respondents to follow the course of action directed to be adopted by the Division Bench in order dated 12 July 2023, but prejudice caused to the Petitioner by breach of the order by the Respondents will have to be also redressed.

9. When the Division Bench had deferred the request of the Petitioner for restoration of the electricity supply, the Division Bench did so because the time bound period was given of three weeks and the Respondents inadvertently or otherwise had not followed the

procedure under Section 126 of the Act of 2003 as held by the Division Bench. But after the Division Bench passed the order on 12 July 2023 which was not challenged, the Respondents were under obligation to comply with the same.

10. In the result thereof, the Writ Petition is allowed. The impugned order dated 10 August 2023 is quashed and set aside. The Respondents will proceed as per the directions of this Court as given in the order dated 12 July 2023 in Writ Petition No. 15061 of 2022 and pass final orders within a period of four weeks from today. However, the request of the Petitioner for restoration of the electricity supply cannot be deferred in these facts and circumstances.

11. Therefore, we direct that the Respondents will reconnect the electricity supply to the Petitioner within a period of one week from today.

12. After completion of the proceedings as directed by the Division Bench, we reserve the right of the Respondents to take such steps as may be permissible in law including disconnection of the electricity supply after following the due procedure.

13. The writ petition is disposed of in above terms.

(MANJUSHA DESHPANDE, J.) (NITIN JAMDAR, J.)