

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

**WRIT PETITION NO. 15061 OF 2022**

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Latif Poultry Farm, a Partnership,  
Mr. Ayaz Ahamad Abdul Latif Mulla,  
Age : 46 years, Occupation : Agriculture/Poultry,  
R/at : Panchling Nagar, Bhalwani,  
Tal. Khanapur, Dist. Sangli ... Petitioner

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Energy Department, Maharashtra,  
State Mantralaya, Mumbai 400 032,  
& 4 Ors.
2. Maharashtra State Electricity Distribution  
Company Ltd.  
Through its Deputy Executive Engineer,  
Having office at : Near Shah Petrol Pump,  
Karad Road, Vita, Tal. Khanapur,  
Dist. Sangli, Pin : 415 311.
3. Maharashtra State Electricity Distribution  
Company Ltd.,  
Through its Junior Engineer,  
Alasand Branch,  
Office at : M.S.E.D.C.L. Office, Tal. Khanapur, ... Respondents  
District Sangli

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Mr. Mahindra Deshmukh, Advocate for petitioner.

Mr. R.P. Kadam, AGP for respondent No.1.

Mr. Hassan Khan, Advocate for respondent Nos.2 and 3.

**CORAM : DHIRAJ SINGH THAKUR &**

**SANDEEP V. MARNE, JJ.**

**DATE : 12<sup>th</sup> JULY, 2023.**

**ORDER**

**Per Dhiraj Singh Thakur, J. :**

1. The petitioner challenges the order dated 19<sup>th</sup> August 2022 passed by the Deputy Executive Engineer, Maharashtra State Electricity Distribution Company Limited (MSEDCL), Sub-division Vita-2, whereby the petitioner has been directed to make a payment of Rs.35,77,110/-, failing which the petitioner stood informed that he would be prosecuted under the provisions of the Electricity Act, 2003 ('the Act').

2. Briefly stated the material facts are as under :

The petitioner is a consumer of electricity and was duly allotted a L.T. Consumer connection bearing No.275300002276. During the course of an inspection of the meter installed at the Poultry Unit of the petitioner by an officer of the MSEDCL, it was allegedly found that the petitioner had indulged in theft of electricity. According to the complaint filed by the Inspecting Officer of the MSEDCL, it was found that electricity was being drawn and utilized in the petitioner's unit by using a three phase service cable

which was being used for running the equipment in the premises of the petitioner by clearly bypassing the meter.

3. An F.I.R. in this regard is also stated to have been registered with the concerned police station. As a consequence of the report prepared by the Inspection Authority, the respondents, by invoking the provisions of section 135(1A) of the Act, disconnected the electricity supply to the unit of the petitioner.

4. At this stage, it is pertinent to mention that section 135 of the Act envisages punishment with imprisonment for a term which may extend to three years or fine or with both, where a person dishonestly *inter-alia* tampers a meter or uses any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted. Section 135(1A) of the Act authorises immediate disconnection of the supply of electricity. The third proviso to section 135(1A), however, envisages the restoration of the supply line of electricity if the consumer deposits or pays the assessed amount or electricity charges in accordance with the provisions of the Act. This restoration of the electricity supply is without prejudice to the

obligation to lodge a complaint as referred to in the second proviso to section 135.

5. Learned counsel for the petitioner urged that the petitioner had a right to seek restoration of the electricity supply and run its unit upon payment of the assessed amount in accordance with the provisions of section 135(A). That the amount which is assessed and was sought to be recovered from the petitioner and calculated at Rs.35,77,111/- was assessed arbitrarily and certainly contrary to the provisions of section 126 of the Act which specifically deals with the procedure which is supposed to have been followed by the respondents in determining the amount payable.

6. Section 126 of the Act prescribing the procedure for assessment on account of unauthorised use of electricity reads as under :

**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 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 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.]...

7. Sub-section (5) of section 126 of the Act authorises the Assessing Officer to make an assessment for the entire period during which there was unauthorised use of electricity and where such period cannot be ascertained, the period would be limited to 12 months immediately preceding the date of inspection.

Sub-section (6) of section 126 further prescribes that the assessment will be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation to section (6) defines an unauthorised use of electricity in the following manner :

(a) .....

(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.

8. The stand of the respondents in the present case is that the order, dated 19<sup>th</sup> August 2022 was issued as per the Act, Rules and Regulations framed thereunder and that the petitioner was given an opportunity to pay the amount reflected in the said order, failing which the petitioner was informed that an FIR would be registered. It is stated that on account of the failure of the petitioner to pay the assessed amount, an FIR was registered on 1-09-2022.

However, learned counsel for the respondents was unable to convince us that the amount assessed as payable in terms of the impugned order dated 19<sup>th</sup> August 2022 was assessed by following the provisions of section 126 of the Act.

9. In any case, it is not the case of the respondents that the order of provisional assessment was ever served upon the petitioner or an opportunity was ever granted to him to file objections thereto as was otherwise required in terms of section 126 of the Act.

10. It is no longer *res-integra* that even in cases where there is

allegation of unauthorised use of energy amounting to theft, the assessment of the amount payable by the consumer has to be calculated in terms of section 126(1) of the Act. In this regard, it would be apt to refer to the judgment of the Apex Court in the case of ***West Bengal State Electricity Distribution Company Limited and Others Vs. Orion Metal Private Limited and Another***<sup>1</sup> where it was held :

“14 .....The power conferred on authorities for making assessment under Section 126(1) of the Act and power to determine civil liability under Section 154(5) of the Act, cannot be said to be parallel to each other. In this regard, we are of the view that the High Court has committed an error in recording a finding, that both proceedings cannot operate parallelly. In a given case where there is no theft of energy, amounting to unauthorized use of energy, in such cases no complaint of theft can be lodged as contemplated under Section 135 of the Act. In such cases for loss of energy, on account of unauthorized use of energy not amounting to theft, it is always open for the authorities to assess the loss of energy by resorting to power under Section 126(1) of the Act. In cases where allegation is of unauthorized use of energy amounting to theft, in such cases, apart from assessing the proceedings under Section 126(1) of the Act, a complaint also can be lodged alleging theft of energy as defined under Section 135(1) of the Act. In such cases, the Special Court is empowered to determine civil liability under Section 154(5) of the Act. On such

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<sup>1</sup> 2019 DGLS (SC) 1093

*determination of civil liability by the Special Court, the excess amount, if any, deposited by the petitioner, is to be refunded to the consumer.....”*

11. Admittedly, the procedure as prescribed under section 126 of the Act has not been followed by the respondents and the petitioner was not given an opportunity to file objections against the provisional assessment by the Assessing Officer much less has any opportunity of being heard been granted to the petitioner in terms of section 126 (3) of the Act.

12. For the reasons above, we allow this petition. The impugned order dated 19<sup>th</sup> **August** 2022 is set aside. The respondents shall proceed in the manner as prescribed under section 126 of the Act and pass final orders within three weeks from today. Thereafter, the request of the petitioner for restoration of the electricity supply be considered upon payment of the assessed amount.

13. The petition is disposed of accordingly.

[ SANDEEP V. MARNE, J. ]

[DHIRAJ SINGH THAKUR, J.]