

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1591 of 2023

Bhavani Polymers Industries

vs.

Maharashtra State Electricity Distribution Company Ltd.

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

*Mr. H.R. Gadhia, Advocate for the Petitioner.
 Mr. S.V. Purohit, Advocate for the Respondent.*

CORAM : A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : 3rd APRIL, 2023.

The challenge raised in this writ petition is to the communication dated 06/03/2023 issued by the respondent in which the petitioner has been informed that the objections raised by it, purportedly under Section 126 of the Electricity Act, 2003 ("Act of 2003" for short) cannot be entertained since the assessment has been made under Section 135 of the Act of 2003.

02] We have heard the learned Counsel for the parties and we have perused the documents on record. On 21/01/2023, a theft bill was issued to the petitioner for an amount of Rs.25,58,100/- pursuant to the report of the Flying Squad. Pursuant thereto, the provisional assessment-sheet under Section 135 of the Act of 2003 came to be issued by recording the following observation:

"Meter bypassed by loosening stud screws"

03] Based on the aforesaid, the respondent has also lodged First Information Report against the petitioner on

16/02/2023 under Section 135 of the Act of 2003. In view of the observations of the Hon'ble Supreme Court in paragraphs 28 and 29 of the decision in Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and another vs. Sri Seetaram Rice Mill – (2012) 2 SCC 108, it becomes clear that if a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the Act of 2003, has abstracted or consumed energy with dishonest intention and without authorization, the case would fall under Section 135 of the Act. When the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulation, 2021 and specially Regulation 10.1.2 are read in that context, it becomes clear that unless the entire amount assessed is paid by the consumer, there can be no re-connection of the meter. Further under Section 154(6) of the Act of 2003, the civil liability can be determined by the Special Court, which position has also been considered by the Division Bench of the Delhi High Court in B.L. Kantroo vs. BSES Rajdhani Power Ltd. - (2009) 108 DRJ 239.

04] For these reasons, we do not find that the judgment relied upon by the learned Counsel for the petitioner in the case of Maharashtra State Electricity Distribution Company Limited vs. The Chief Engineer (Electrical) and another in Writ Petition No.2821 of 2006 decided on 04/05/2007 assists the case of the petitioner.

05] We, therefore, do not find any reason to interfere in writ jurisdiction. It is open for the petitioner to seek adjudication of its claim before the Special Court in

accordance with the provisions of Section 154 of the Act of 2003. With regard to what has been stated in paragraph 4 of the impugned communication dated 06/03/2023, the respondent shall supply the said material in accordance with law to the petitioner based on the demand of such records. It is clarified that this Court has not examined the merits of the rival claims in that regard. With aforesaid observations, the writ petition is dismissed. No costs.

(M.W. Chandwani, J.)

(A.S. Chandurkar, J.)

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