2023:BHC-NAG:17033-DB

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

WRIT PETITION NO.4540/2023

Shri Bhagwan s/o Anandrao Bhendekar,
aged about 56 years, Occ. Business,
R/o Shivni, Tq. Mangrulpir, Dist. Washim … Petitioner.

Versus

1. Shri Abhijeet Pandurang Patil,
aged about 35 years, Assistant Engineer,
Flying Squad, Maharashtra State Electricity
Distribution Co. Ltd. Akola Circle, Akola.

2. Dy. Executive Engineer,
Maharashtra State Electricity Distribution
Co.Ltd. Sub Division, Mangrulpir, Dist. Washim.

3. Jr. Engineer, MSEDCL, Asegaon,
Sub-Station, 33 K.V.Asegaon,
Tq. Mangrulpir, Dist. Washim. ... Respondents.

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Mr. Amol Deshpande, Advocate for petitioner.
Mr. D.M. Kale, Advocate for respondent nos.1 to 3.

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CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATED : 05/12/2023

ORAL JUDGMENT (Per Nitin W. Sambre, J)

1. Rule. Rule made returnable forthwith. Mr. Kale, learned counsel waives notice on behalf of the respondents. Heard finally by consent of the parties.

2. The Flying Squad of the respondents after having detected the energy theft, lodged an FIR against the petitioner, resulting into registration of Crime No.0141/2023 for an offence punishable under Section 135 of the Indian Electricity Act (Amended), 2003 (hereinafter referred to as "Act of 2003").

3. Subsequent thereto, since the electricity theft was noticed, as reflected in the aforesaid FIR, a demand note (provisional/final) was issued on 15.02.2023, thereby assessing the theft of 2,08,503 Units by the petitioner while operating his stone crusher. As such, the amount assessed to be paid by the petitioner towards the load was found to be Rs.34,12,020/- alongwith compounding charges of Rs.7,50,000/-.

4. The aforesaid order of assessment dated 15.2.2023 is questioned in the petition alleging that the same is contrary to the very scheme of Section 126 of the Electricity Act, 2003. Our attention is invited to Part XII of the Act of 2003, which pertains to the investigation and enforcement. The provisions of Section 126 of the Act of 2003, which provides for assessment. The counsel for the petitioner would urge that the provisions of sub-section (1) contemplates a provisional assessment based on the best of the judgment of the respondent-authorities to be made available to the petitioner and such an order of provisional assessment is subject to an objection to be preferred by the

petitioner. It is urged that above procedure is not adopted in the case in hand. According to him, that being so, the order impugned which is in the nature of final assessment order being contrary to the provisions of Section 126 of the Act of 2003 is not sustainable and is liable to be quashed and set aside.

5. Mr. Kale, learned counsel appearing for the respondents, would invite our attention to the provisions of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees Including Power Quality) Regulations, 2021 (hereinafter referred to as, "Regulation of 2021"). According to him, the said provision in express terms provides for the mode and manner in which the inspection is to be caused in case, if it is suspected that the offence is committed under Section 135 of the Act of 2003. According to him, in case of theft of electricity, the computation of fine and the same to be paid by the consumer like the present petitioner, in express terms is provided along with the mechanism for computation to be adopted. He would urge that it's an open and shut case in the matter of the assessment of the penalty if the theft is detected. The penalty to be paid by the consumer, who is suspected to have committed an offence of theft, is to be proceeded pursuant to the aforesaid Regulation of 2021. He would specifically invite our attention to second proviso to Clause 10.1.2 of the aforesaid

Regulation of 2021. In this background, he would urge that the provisions of Section 126 of the Act of 2003 will not be applicable in the case in hand so as to appreciate the contention of the petitioner of first having a provisional assessment order to be served on the petitioner. As such, he would claim that the petition is liable to be dismissed.

6. We have considered the rival submissions.

7. From the challenge raised in the petition it is quite clear that the petitioner is not willing to go for compounding. The aforesaid Regulation of 2021, which are relied on by the counsel for the respondents was framed in 2021 and in reference to an offence under Section 135 of the Act of 2003. The Regulation of 2021 also provides for a reference to the assessment to be carried out under Section 126 of the Act of 2003.

8. The case of the respondents is that the petitioner has committed the theft of the electricity while operating the stone crusher by installing the extra line bypassing the meter. It is claimed by the respondents that the said act amount to unauthorized use of electricity and they are also empowered to make assessment under the Regulations of 2021 referred to hereinabove. The fact remains that all the instances of unauthorized use of electricity may not amount to theft

of electricity as per Section 135 of the Act of 2003 but, at the same time theft of electricity which is covered by Section 135 of the Act of 2003 definitely falls within the definition of unauthorized use of electricity.

9. The learned counsel for the petitioner has relied on the Regulations of 2021 so as to claim that the penalty has to be imposed in accordance with the said Regulations. However, on a plain reading of Clause 10.1.1 of the Regulations of 2021, it is seen that the said Clause speaks of attraction of the said provision on conviction of the party like the petitioner for an offence of theft of electricity punishable under Section 135 of the Act of 2003. Admittedly, in the case in hand, the First Information Report is lodged for an offence punishable under Section 135 of the Act of 2003 and the compounding charges have been levied vide the impugned demand notice. The impugned demand notice also contains the assessment of the amount which in any case is based on the second proviso to Clause 10.1.2 of the Regulations of 2021.

10. The Regulations of 2021 are enacted to ensure that the very provisions of the Act of 2003 are implemented in its true perspective having regard to the objective sought to be achieved. The fact remains that the Regulations are not sanctioned or approved by the Legislature but are published in the official gazette and the same do not have any binding effect. The Regulations though are legally enforceable,

however, it cannot be said that the Regulations can act contrary to the statutory provisions. The Regulations as such are required to be read in the manner so as to make them workable with the statutory provisions and not by militating against the statutory provisions.

11. The fact remains that the plain reading of the Regulations of 2021 and more particularly Clauses 10.1.1 and 10.1.2 of the Regulations of 2021 operates in altogether different fields. Clause 10.1.1 would be attracted on conviction whereas Clause 10.1.2, and more particularly second proviso to it, which is sought to be relied upon by the respondents, operates in case of restoration of the supply. These provisions of the Regulations of 2021 in our opinion cannot be considered contrary to what has been provided in the provisions of Section 126 of the Act of 2003.

12. Perusal of the Regulation of 2021 prescribes that the respondent-authorities are guided by the principles, which are provided in the said Regulation of 2021 for the purpose of carrying out assessment, however, the Regulation in express terms does not override the very provisions of Section 126 of the Act of 2003. In the Act of 2003, the provision of assessment is made under Section 126 of the Act of 2003 and therefore, the respondents cannot claim that they can conduct themselves *de hors* the said provision, whereby carrying out a

provisional and final assessment. The fact remains that while carrying out such assessment may be provisional or final in addition to the recourse being taken to the aforesaid Regulation of 2021, the respondent-authorities must have regard to the provisions of Section 126 of the Act of 2003. In our view, the Regulation cannot have an overriding effect over the principal provision in the parent Act of 2003.

13. In the light of stand taken by the petitioner of questioning the impugned order it is apparent that he is not willing to go for compounding of the offence. Even otherwise the respondent cannot force the petitioner to go for compounding of offence. That being so, the provisional assessment need not be carried out in accordance with the provisions of Section 126 of the Act of 2003 cannot be said to be sustainable.

14. In the aforesaid background, when confronted, the counsel for the petitioner, on instructions, assures that an amount of Rs.10,00,000/-(Rs. Ten lakhs) shall be deposited with the respondents within a period of four weeks from today.

15. Once such an amount is deposited by the petitioner, the petitioner shall treat the order impugned to be the provisional assessment and submit his objection along with the receipt of payment

to the respondents. The respondents thereafter while dealing with the claim of the petitioner for the purpose of passing final order under Section 126 of the Act of 2003 shall have regard to the objection raised by the petitioner and such other material as the petitioner is intended to place on record.

16. Needless to clarify that the respondents shall pass a fresh order in accordance with Section 126 of the Act of 2003 read with the Regulation of 2021 referred above. Such an order be passed by the respondent-authorities only if the petitioner demonstrates his *bonafide* by depositing an amount of Rs.10,00,000/- (Rs.Ten lakhs) as has been undertaken before this Court.

17. Writ petition as such stands allowed. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

18. Needless to clarify that while dealing with the objection of the petitioner, the respondent-authorities shall have regard to the provisions of Section 152 of the Act of 2003 in the matter of dealing with the issue of payment of compounding of offence.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

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