



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL WRIT PETITION NO. 1219 OF 2023

THE SUPERINTENDING ENGINEER, THE MAHARASHTRA
STATE ELECTRICITY DISTRIBUTION COMPANY LTD.

VERSUS

NEWASA TALUKA SAHAKARI DHOOD VYAVASAIK SANGH
LTD. SONAI

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Mr. Salve Avinash Rangnathrao, Advocate for the petitioner.

Mr.V.D. Sapkal, Senior Advocate i/b Mr.S.R. Sapkal, Advocate for
Respondent

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 8th FEBRUARY, 2024.

PER COURT :-

This Writ Petition is directed against the order passed by
the learned Special Judge, Newasa dated 24.05.2023 below
Exhibit-5 in Criminal M.A. No.8 of 2023 regarding the payment of
entire amount of assessment bill dated 15.02.2023.

2. Brief facts of the case are as under :-

The respondent – institution Newasa Taluka Sahakari
Dhoodh Vyavasaik Sangh Ltd., committed theft of electricity of
Rs.1,24,07,937/-. After the crime was registered against the
respondent, the electricity was cut, and therefore, the respondent
filed Civil Suit and prayed for injunction. It was withdrawn and

thereafter Criminal Application No.8 of 2023 was preferred under section 154(5) of the Electricity Act to determine the civil liability to electricity bill. The application was heard and decided on merit and following operative order was passed :-

“ORDER

- 1) The Application Exh.5 is allowed as under :
 - a) Applicant shall deposit 40% amount out of total (Rs.1,24,07,937/- One Crore Twenty Four Lac Seven Thousand Nine Hundred Thirty Seven only) with respondents within one weeks from this order.
 - b) After depositing the above said amount, the respondents shall restore the electricity supply of consumer No.148039003497 till decision of the main application.
 - c) After restoration of electricity supply, the applicant shall pay the electricity bill regularly as per meter reading.
 - d) This order is passed without prejudiced to the right of the both parties.
 - e) The copy of this order be sent to the respondents for information and necessary action.”

Thus, the respondent was directed to deposit 40% amount out of total amount of Rs.1,24,07,937/- within one week. The said order is challenged.

3. The learned advocate for the petitioner is relying upon the authority in the case of ***The Executive Engineer and another Vs M/s Sri Seetaram Rice Mill in Civil Appeal No.8859 of 2011*** arising

out of S.L.P. (C) No.36166 of 2010. He pointed out the distinction between sections 126 and 135 of the Electricity Act. Para no.15 of the said judgment reads as under :-

“15. Upon their plain reading, the mark differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. Section 135 of the 2003 Act falls under Part XIV relating to 'offences and penalties' and title of the Section is 'theft of electricity'. The Section opens with the words 'whoever, dishonestly' does any or all of the acts specified under Clauses (a) to (e) of Sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Sub-section (1A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 -Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under Sub-sections (2) to (4) of the said Section. The fine which

may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'authorized use of electricity'. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of -Section 126(2) of the 2003 Act. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of Sub-

sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.”

4. On the contrary, the learned Senior advocate Mr.Sapkal pointed out sub-section (5) of section 154 of the Electricity Act, 2003.

Sub-section (5) of section 154 reads as under :-

“Section 154(5) :The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.”

5. Thus, the Special Court is empowered to determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it is a decree of civil court. The

impugned order is passed under sub-section (5) of the section 154 of the Electricity Act, which expressly empowers the Special Court to determine the civil liability. Therefore, the ratio laid down in the authority of ***The Executive Engineer (cited supra)*** is not helpful for the petitioners.

6. There are several factual aspects, which were raised by both the sides. However, at this stage, the legality of the impugned order is to be considered along with section 154(5). While passing the impugned order in para no.8, the learned trial Court has observed that if the electricity supply is not restored then certainly the applicant as well as the farmers in the entire Newasa Taluka have to face lot of problems. Therefore, the interim order was passed. Considering the scope and ambit of section 154 and the reasons given by the learned Special Judge, the impugned order is found legal and correct. No illegality and perversity is pointed out. There is no substance in the grounds raised in the Writ Petition. The Petition, therefore, deserves to be dismissed. It is dismissed accordingly.

(SANJAY A. DESHMUKH, J.)