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

WRIT PETITION NO.4931 OF 2006

SHRI UTTAM GYANBA CHAVAN)
303, Uma Ashish, Opp. Techno Petrol)
Pump, Kalyan Shil Road, Golivali, Kalyan)
District – Thane Pin-421304) .. **Petitioner**

Versus.

1. MAHARASHTRA STATE ELECTRIC)
DISTRIBUTION COMPANY LIMITED)
Through its Executive Engineer, having)
office at Kalyan (E), Taluka Kalyan,)
District Thane.)

2. THE DY. EXECUTIVE ENGINEER,)
M. S. R. D. Co., Ltd., S. Dn. I, Netivali)
Sub Section, Near Tata Powerhouse, Shil)
Road, Kalyan (East), Dist-Thane)

3. STATE OF MAHARASHTRA) .. **Respondents**

...

Mr. R. P. Lote a/w Mr. Bhushan Bhadgale for the Petitioner.
Mr. Sumeet Palsudesai i/by Mr. M. V. Kini & Co. for Respondent Nos.1 &
2.

...

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 1st MARCH 2024.

JUDGEMENT : (PER : A. S. CHANDURKAR, J)

1. Since the writ petition is of the year 2006 it has been taken up for
final disposal.

2. The challenge raised in this writ petition is to order dated 29/03/2006 that was issued to the petitioner purportedly under Section 135 of the Electricity Act, 2003 (for short, the Act of 2003). A further prayer has been made re-examine the petitioner's existing electric meter and to take further steps thereafter.

3. While admitting the writ petition interim relief in terms of prayer clause (e) subject to deposit of Rs. 30,000/- within a period of three weeks came to be granted. Since the amount of Rs.30,000/- was deposited on 12/10/2006 in accordance with the interim order, the electricity supply was restored to the petitioner's premises.

4. It is the case of the petitioner that the Maharashtra State Electricity Distribution Limited-MSEDCL was not justified in applying the provisions of Section 135 of the Act of 2003 by treating the case to be one of theft of electricity. It is informed that during the pendency of the present writ petition, the proceedings initiated under Section 135 of the Act of 2003 have been decided by the learned Special Judge, Kalyan and by the judgment dated 21/04/2019 passed in Special Case No.519 of 2006, the petitioner stands acquitted of the offence punishable under Section 135 of the Act of 2003. In view of this adjudication by the competent Court it becomes clear that issuance of the aforesaid demand on 29/03/2006

under Section 135 of the Act of 2003 has been held to be not justified.

5. The petitioner preferred an appeal under Section 127 of the Act of 2003 seeking to raise challenge to the aforesaid assessment. In the affidavit in reply filed by the MSEDCL, it has been stated that since 1/3rd amount as required by Section 127 of the Act of 2003 had not been deposited, the appeal had not been entertained.

6. In the light of this adjudication coupled with the interim orders passed in the writ petition, in our view the following order would serve the ends of justice:-

a) The demand has made by the MSEDCL on 29/03/2006 shall be treated as a provisional assessment under Section 126 (3) of the Act of 2003.

b) The petitioner having deposited an amount of Rs. 30,000/- in this Court which amount has been withdrawn by the MSEDCL, the same shall be treated as deposit of 1/3rd amount as required by Section 127 of the Act of 2003.

c) The appeal preferred by the petitioner on 24/04/2006 shall be decided on its own merits and in accordance with law. It is noted that this Court by the interim orders 20/11/2013 and

17/02/2022 has held in clear terms that the petitioner is not liable to pay any amount towards arrears/interest on the disputed amount. This aspects shall be kept in mind while deciding the appeal. Keeping aforesaid aspects in mind as well as the judgment dated 21/04/2009 in Special Case No.519 of 2006, the appeal shall be decided expeditiously by the authority under Section 127 of the Act of 2003. Subject to aforesaid, the petitioner's request for re-examining the petitioner's electric meter can be considered by the competent authority.

d) In case the petitioner is not satisfied with the outcome of the said proceedings, he is free to take appropriate steps in that regard.

7. The writ petition is disposed of in aforesaid terms. Rule accordingly with no order as to costs.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]