AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.810 OF 2025

India Fashions Pvt. Ltd. & Anr. … Petitioners

V/s.

Maharashtra State Electricity Distribution Co. Ltd., & Ors. … Respondents

Mr. Vishal Kanade with Mr. Kaustubh Thipsay, & Mr. Pradeep Salgar i/by Mr. Waquar Pathan for the petitioners.

Mr. Rahul Sinha with Mr. Soham Bhalerao i/by DSK Legal for respondent No.1.

Mr. Meet Vora i/by Navdeep Vora & Associates for respondent No.2-MIDC.

Mr. Sanjay D. Rayrikar, AGP for respondent No.3-State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 3, 2025

P.C.:

1. The challenge in the present Writ Petition is directed against the final assessment order dated 22nd February 2021 and the consequential notice dated 26th March 2021 issued by respondent No.1, invoking the provisions of Section 126 of the Electricity Act, 2003. The petitioners have assailed the said actions on the ground that the assessment has been carried out in breach of the principles of natural justice, and in contravention of the statutory provisions governing such proceedings.

2. Upon perusal of the record, it emerges that a flying squad constituted by the respondent-authorities visited the premises of the petitioners on 20th December 2020 and detected alleged unauthorized use of electricity. Consequently, a provisional assessment bill was raised in the sum of ₹2,63,69,730/- under Section 126 of the Electricity Act, 2003. The said action initiated under the statutory scheme mandates a notice to the consumer and affording of an opportunity to file objections within seven days from the date of service, in accordance with the principles laid down under Section 126(3) of the Act.

3. From the materials placed on record, it is evident that although the statute contemplates a minimum period of seven days for the assessee to respond to the provisional assessment and be heard thereon, in the present case, the hearing was conducted on the sixth day from the date of issuance of notice. Though seemingly a minor deviation, such procedural irregularity assumes significance in the context of quasi-judicial adjudication affecting civil consequences. Moreover, it is not in dispute that the petitioners have deposited 50% of the assessed amount in compliance with the requirement of Section 127 of the Electricity Act, 2003, in order to avail the statutory remedy of appeal, which reflects their bona fides in prosecuting the matter.

4. Furthermore, it is pertinent to note that, subsequently, and without prejudice to their rights and contentions, the petitioners have deposited the entire amount demanded by the respondent-authority, as per the commercial tariff bill, post the date of 27th January 2021. This conduct demonstrates their intention not to avoid liability, but rather to seek a fair and just determination of the disputed assessment.

5. In the aforesaid circumstances, and bearing in mind the procedural irregularities that may vitiate the process of assessment, it would be just, proper, and in consonance with the principles of natural justice that the assessment proceedings under Section 126 of the Electricity Act, 2003 are remanded back to the designated Authority. The Authority shall afford a meaningful opportunity of hearing to the petitioners, enabling them to place on record their objections and explanation with regard to the assessment, and thereafter pass a reasoned order in accordance with law.

6. Accordingly, the impugned final assessment order dated 22nd February 2021 is hereby quashed and set aside.

7. The concerned Authority under Section 126 of the Electricity Act, 2003 is directed to re-adjudicate the matter, after affording due opportunity of hearing to the petitioners as well as the respondent-licencee, and shall pass a speaking and reasoned order, preferably within a period of three months from the date of receipt of a copy of this judgment.

8. It is made explicitly clear that this Court has not entered into the merits of the controversy, nor has it expressed any opinion on the correctness or otherwise of the assessment made. The fresh adjudication shall be made uninfluenced by the earlier assessment order. The amounts already paid or deposited by the petitioners shall abide by the outcome of the fresh decision to be rendered by the Authority under Section 126 of the Electricity Act, 2003.

9. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)