

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9077 OF 2024

Raheja Universal Pvt Ltd

...Petitioner

Versus

The Supdt Engineer Msdcl Ltd Vashi Circle And Anr ...Respondents

Adv. Suraj Swami a/w Adv. Sushant N. Tare i/b Adv. Rameshwar N. Gite, for the Petitioner.

Adv. Deepa Chawan a/w Mr. Kiran Gandhi and Reshma Nathani, for the Respondents.

Ms. P.J. Gavhane, AGP for State.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 7 APRIL 2025

P.C.:

1. This writ petition filed under Article 226 of the Constitution of India prays for the following substantive reliefs :-

“a. This Hon'ble court be pleased to issue appropriate writ of mandamus or any other writ in nature of mandamus thereby directing the Respondents herein to categorize the Petitioners' connection as of industrial category of his premises plot no. GEN - 2/4 B&C TTC MIDC area Turbhe, Navi Mumbai for consumer no. 000079034400 (11 KV CD - 630 KVA/CL - 945 AW)

b) This Hon'ble court be pleased to issue appropriate writ of mandamus or any other writ in nature of mandamus thereby directing the Respondents herein to refund an amount of Rs. 2,87,36,081/- charged under category HT- II (commercial tariff) as petitioner's activity is of industrial nature however wrongly charged as HT- II commercial category.

c) This Hon'ble court be pleased to issue appropriate writ of mandamus or any other writ in nature of mandamus be pleased to quash and set aside the provisional assessment bill dated 25/04/2024 bearing no. 2744 issued by MSEDCL in respect to consumer no. 000079034400 (11 KV CD - 630 KVA/CL - 945 AW) at his premises plot no. GEN - 2/4 B&C TTC MIDC area Turbhe, Navi Mumbai.”

2. At the outset Ms. Deepa Chavan, learned senior counsel for respondent no. 1 has drawn our attention to the affidavit in reply filed on behalf of Mr. Sanjay Shankar Patil, Engineer of Maharashtra State Electricity Distribution Company to submit that during the pendency of this petition, on 30 May 2024 a final assessment order under section 126(3) of the Electricity Act, 2003 has been passed. A copy of the said order is annexed at page 226 of the reply affidavit. She would submit that as against such order, the remedy as available to the petitioner to assail the same, would lie under the provision of section 127, which provides for an appeal to the Appellate Authority, hence this petition ought not to be entertained.

3. It is also clear from prayers as made in the petition that although a final assessment order was passed on 30 May 2024, till date no steps have been taken to file an interim application seeking amendment of the petition to assail the assessment order.

4. In response to Ms. Chavan's contention, learned counsel for the petitioner would nonetheless submit that the petition be entertained and heard on merits, and more particularly relying on such decision of the Supreme Court in *Whirpool Corporation v/s Registrar of Trademark, Mumbai and others*¹. Hence, according to the petitioner this is a fit case where such discretion ought to be exercised by the Court in the given facts and circumstances.

5. Although there cannot be two opinions on the principles of law as laid down by the Supreme Court in the case of Whirpool Corporation (supra) on maintainability of a writ petition, however, considering the facts and

1. (1998) 8 SCC 1

circumstances of the present case, we find ourselves in agreement with Ms. Chavan, that in the facts and circumstances of the case, it is appropriate for the petitioner to take recourse to the provisions of section 127 and approach the Appellate Authority, so that grievances of the petitioner can be considered more effectively in the appellate proceedings.

6. Thus, taking overall view of the matter, we are of the clear opinion that the petitioner needs to espouse the statutory remedy of an appeal.

7. We find that there is an order passed by a coordinate Bench of this Court dated 16 October 2024, which was passed at the time when the petitioner had moved for ad-interim relief. By such order the Division Bench while adjourning the proceedings directed that without prejudice to the rights and contentions of all parties, the electricity connection of the petitioner shall not be discontinued. The said protection continues to operate till the date.

8. In this view of the matter, we find it appropriate and in the interest of justice that this petition be disposed of in terms of the following order:-

(i) The petitioner shall take recourse to the provision of section 127 so as to file an appeal before the Appellate Authority in assailing the final assessment order passed under section 126 (3) of the Electricity Act, 2003 dated 30 May 2024.

(ii) If the appeal is filed within a period of four weeks from the date a copy of this order is made available, let the same be considered by the Appellate Authority on merits and without an objection as to limitation, for the reason that the petitioner was bonafide pursuing

this petition. The petitioner would be at liberty to even move a stay application.

(iii) The interim protection granted by this court vide order dated 16 October 2024 shall continue to operate till appropriate order on the stay application or the final order on the appeal is passed whichever is earlier.

(iv) All contentions of the parties on merits are expressly kept open.

(v) Disposed of. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]