

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

WRIT PETITION NO.12434 OF 2024

Maharashtra State Electricity
Distribution Company Limited
through Superintending Engineer
a Company incorporated under the
Companies Act, 1956 and the
Electricity Act, 2003 and having its
Office at MSEDCL. Vasai Mandal,
2/3 Deepshree, Navghar (E)
Vasai Road.

....Petitioner

V/S

1 M/s. Eden Agencies
C.T.S. No.55/2, Plot No.3
Village Sativali, Taluka Vasai,
Distrit Palghar

2 Chief Electrical Inspector
Maharashtra, Bandhkaam Bhavan,
3rd Floor, Administrative Building
Ramkirhn Chemburkar Marg,
Industry, Energy, Labour and
Mineral Work Department,
Mumbai.

....Respondents

Mr. Nirav Shah with Mr. Kiran Gandhi and Ms. Niharika
Singh i/b M/s. Little & Co. *for the Petitioner-MSEDCL.*

Mr. Anil D'Souza with Mr. Mark Dbritto i/b M/s. Ernest
Tuscano *for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 04 FEBRUARY 2025 &
06 FEBRUARY 2025.
PRONOUNCED ON : 17 FEBRUARY 2025.

J U D G M E N T :

1. The Petitioner-Maharashtra Electricity Distribution Company Limited (**MSEDCL**) has filed this petition challenging order dated 20 November 2023 passed by the Appellate Authority allowing the Appeal preferred by Respondent No.1 and setting aside the final assessment bill issued by the Petitioner-MSEDCL for Rs.19,90,154/- with further direction to the Petitioner-MSEDCL to refund 50% amount of Rs. 9,95,077/- deposited by Respondent No.1.

2. Petitioner-MSEDCL is an undertaking of Government of Maharashtra engaged in the business of distribution of electricity in the area of supply. Respondent No.1 had applied for High Tension (**HT**) Power-Loom connection with the Petitioner-MSEDCL and accordingly was granted such connection on 1 June 1991. According to Petitioner-MSEDCL, subsidized tariff was extended to Respondent No.1 upon representation made by it that it was operating power-loom in the premises. On 12 January 2016, Petitioner-MSEDCL conducted spot inspection of the factory of Respondent No.1 and it was noticed that though the supply was sanctioned for power-loom purpose no manufacturing activity of power-loom was actually carried out in the premises. It was found that Respondent No.1 was merely purchasing readymade clothes and only rolling and repacking the same. Petitioner-MSEDCL

construed the action of Respondent No.1 as breach of concession extended to it and accused Respondent No.1 of misusing the benefit of supply of electricity at subsidized rates. Accordingly, Petitioner-MSEDCL initiated action under provisions of Section 126 of the Electricity Act, 2003 (**the Act**) and made an order of provisional assessment dated 22 February 2016 for amount of Rs.41,26,419/-. Upon receipt of the provisional assessment order, Respondent No.1 raised objection thereto and was accordingly granted an opportunity of hearing. After considering objection raised by Respondent No.1 and after hearing it, the Assessing Officer confirmed the provisional assessment and passed final assessment order HT-1N with revised direction demanding an amount of Rs.19,90,154/-.

3. Respondent No.1 filed appeal before the Appellate Authority bearing Appeal No.234 of 2016 under provisions of Section 127 of the Act challenging the final assessment order dated 6 April 2016. Petitioner-MSEDCL opposed the Appeal by filing Reply. The Appellate Authority has passed order dated 20 November 2023 thereby allowing the Appeal filed by Respondent No.1 and has set aside the order dated 6 April 2016 with further direction to the Petitioner-MSEDCL to refund 50% of the demanded amount to Respondent No.1.

4. Petitioner is aggrieved by the order dated 20 November 2023 passed by the Appellate Authority and has accordingly filed the present Petition.

5. I have heard Mr. Shah, the learned counsel appearing for the Petitioner-MSEDCL and Mr. D'souza the learned counsel appearing for Respondent No.1. I have gone through the findings recorded by the Appellate Authority in the impugned order as well as the relevant records of the case placed alongwith the Petition.

6. There is no dispute to the position that Petitioner-MSEDCL has sanctioned and Respondent No.1 has availed subsidized electricity connection for operation of power-loom. Petitioner-MSEDCL has placed on record Commercial Circular No.11 dated 27 September 2005 on the subject of subsidy in tariff to High Tension Power loom consumers. As per the said Circular, Government of Maharashtra had declared subsidized rate of Rs.1.40 p. per unit for the period from 1 June 2005 to 31 March 2006 for power-loom consumers. By Circular dated 27 September 2005, the benefit of subsidized rate was also extended to High Tension power-loom consumers.

7. Respondent No.1 was thus enjoying electricity supply at subsidized rates at its factory under the representation that it was operating a power-loom thereat. However, when Petitioner-MSEDCL conducted spot inspection on 12 October 2016, it was noticed that the activity of fabric manufacturing was totally stopped in the factory and Respondent No.1 was purchasing ready-made fabric from outside and was merely checking, air furnishing packing and delivering the same at the factory.

Respondent No.1 does not really dispute the fact that it does not operate power-loom at the factory. In his appeal also Respondent No.1 specifically admitted that the power-loom was in operation since September 2015. Therefore, there is no factual dispute about the findings recorded in the spot inspection report. In the provisional assessment, an amount of Rs.41,26,419/- was assessed against Respondent No.1. However, in the final assessment, the same was reduced to Rs.19,90,154/- vide order dated 6 April 2016. It appears that in the provisional assessment Petitioner-MSEDCL had charged commercial rate for the period from December 2014 to January 2016. In the final assessment order dated 6 April 2016, the Petitioner-MSEDCL however applied industrial rate under tariff category HT-1N and accordingly the demand was reduced to Rs.19,90,154/- in the final assessment order dated 6 April 2016.

8. In Appeal the Appellate Authority has set aside the final assessment order dated 6 April 2016 by recording following findings:

“१. विद्युत पुरवठ्याच्या अटी व इतर शर्ती विनियम, २००५ मधील बाब क्रमांक २४.३.३ आणि २४.४ मधील तरतुदींचा भंग केल्याचे स्पष्ट होते.

२. दिनांक १२ जानेवारी २०१६ रोजीच्या स्थळ परीक्षण अहवालानुसार, अपीलकर्ता यांचे परिसरात फक्त "checking, airofinishing, packing, rolling" इत्यादी प्रक्रिया सुरु होत्या आणि त्या करिता लागणारी यंत्रे देखील कार्यरत होती. महावितरणचे दिनांक २७ सप्टेंबर २००५ रोजीचे वाणिज्यिक परिपत्रक क्रमांक ११ मध्ये नमूद केल्यानुसार, अपीलकर्ता यांचा वीज वापर औद्योगिक असला तरीही यंत्रमाग बंद असल्याने ते "यंत्रमाग उद्योगांना मिळणाऱ्या अनुदानास/सवलतीस पात्र ठरत नाहीत," त्यामुळे प्रतिवादी यांनी पारीत केलेल्या अंतिम मूल्य निर्धारण देयकातील औद्योगिक दराने केलेली वर्गवारी योग्य ठरते.

३. प्रतिवादी यांनी अपीलकर्ता यांचा वीज वापर औद्योगिक असल्याचे त्यांचे अंतिम मूल्य निर्धारण आदेशात मान्य केले असून याच वर्गवारीमध्ये मूल्य निर्धारण देखील केले आहे. याद्वारे, अपीलकर्ता यांस मंजूर वीजदर वर्गवारी आणि मूल्य

निर्धारण करतेवेळी ग्राह्य धरण्यात आलेली वीज वर्गवारी एकच (HT १ N) असल्याने वीज अधिनियम २००३ च्या कलम १२६ अन्वये करण्यात आलेली कार्यवाही अनुचित आणि तरतुदीस धरून नसल्याचे स्पष्ट होते.

४. अपीलकर्ता यांच्या वीज दरातील फरकाची वसुली करण्याकरीता वीज अधिनियम २००३ च्या कलम १२६ हे माध्यम से शकत नाही.

५. वरील सर्व बाबींचा विचार करता, प्रतिवादी यांनी दि.६ एप्रिल २०१६ रोजी अंतिम मूल्य निर्धारण आदेशान्वये पारीत केलेले रु.१९,९०,१५४/- एवढ्या रकमेचे अंतिम निर्धारित वीज देयक रद्द करणे संयुक्तिक वाटते.”

9. The Appellate Authority has recorded a finding in paragraph 2 of his conclusions that levy of electricity charges in the final assessment bill at industrial rates is correct. However the main reason why the final assessment bill is set aside by the Appellate Authority is non-change of electricity category in respect of sanctioned category and applied category at the time of final assessment. The Appellate Authority has held that the category under which electricity supply is sanctioned and the one under which final assessment is made happens to be same i.e. HT-1N and that therefore the action is not in conformity with provisions of Section 126 of the Act.

10. Section 126 of the Electricity Act, provides thus :

126. Assessment

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

[(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

[***]

[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to [twice] the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

[(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”]

11. Thus, under provisions of sub-section (3) of Section 126 of the Act, there is outer limit of 30 days for passing final assessment order from the date of service of order of provisional

assessment. In the present case, the provisional assessment order was served on the Respondent on 24 February 2016 and final assessment order has been passed after 44 days on 6 April 2016. Thus, there appears to be a clear violation of provisions of sub-section (3) of Section 126 of the Act.

12. Mr. Shah would attempt to salvage the situation by inviting my attention to commercial Circular No.99 dated 24 August 2009, in which instructions have been circulated pertaining to the provisions of Section 126 of the Act. The relevant instructions in the said Circular are as under:

Once the provisional assessment bill is served, the person can accept the same and deposit the amount within the period of 7 (seven) days. The person on whom the provisional bill is served is also entitled to file his objection. In case such objection is filed hearing is required to be given to such person and thereafter the final order of assessment is required to be passed within 30 (thirty) days from the date of service of the provisional assessment order.

13. According to Mr. Shah, 30 days period is available from the date of grant of hearing to the affected party on account of use of the word 'thereafter'. However the above instructions do not appear to be in conformity with provisions of sub-section (3) of Section 126 of the Act in which the scheme appears to be that a person, on whom provisional assessment order is served, can file objections thereto and the Assessing Officer, after affording the reasonable opportunity and hearing to such person is required to pass final order of assessment within 30 days from the date of service of such order of provisional assessment. Section 126(3) of the Act does not use the word 'thereafter' as is

used in the Circular. Thus, the statutory scheme of Section 126 of the Act appears to be such that the Assessing Officer shall first provisionally assess unauthorized use of electricity and serve the order of provisional assessment on person in occupation or in possession or in-charge of the place or premises. The person who is served with the provisional assessment order can either deposit the assessed amount within a period of 7 days or can file objection. Though no specific period is prescribed for filing of objections, outer limit of 30 days is prescribed for making the final assessment order. Mr. D'souza has contended that when provisions of sub-sections (3) and (4) of Section 126 of the Act are read in conjunction with each other, the objections are required to be filed within a period of 7 days since the same period is prescribed for depositing the assessed amount. He would invite my attention to the provisional assessment order dated 22 February 2016, which had also granted time of 7 days for either depositing the amount or filing of objections. In any case, the prescription of any time limit for filing of objections is not a subject matter of dispute in the present Petition. What is relevant is the outer limit for passing of final assessment order.

14. It appears that in the Reply filed before the Appellate Authority, Petitioner has admitted that the final assessment order was required to be passed within 30 days from the date of service of provisional assessment order and that the said provision is mandatory. It would be relevant to reproduce the relevant portion of the Reply to the Appeal before the Appellate Authority, which reads thus :

B. Reply of objection raised in Appeal and rejoinder:

Sr. No.	Objections of Consumer	Reply of MSEDCL
3	The procedure laid down in MSEDCL COS 2010 is not followed.	The detail procedure of assessment has been laid down in S.126 of EA,2003 for assessment where there was no period prescribed for activities except the issuance of final assessment order within 30 days from the date of service of provisional assessment order. These provisions are mandatory and shall be taken into consideration in hearing of Appeal against the final assessment order passed u/s.126 of EA, 2003. The procedure prescribed in MSEDCL COS 2010 is for guidance of MSEDCL officer and did not have mandatory in nature. Therefore, procedural lapse would not come to escape the consumer from the consequence of his act.

15. However, the contention of Petitioner that the procedure prescribed in MSEDCL COS 2010 is for guidance of MSEDCL Officer and is not mandatory in nature appears to be erroneous. The period of 30 days is prescribed under provisions of sub-section (3) of Section 126 of the Act and not in any guidelines. It may be that the guidelines also reiterate the said outer limit. However so long as the outer limit of 30 days is prescribed in Section 126(3) of the Act, the same will have to be mandatorily followed.

16. In *The Executive Engineer and others vs. Seetaram Rice Mill*, (2012) 2 SCC 108, the Apex Court has considered the ambit and scope of Section 126 of the Act, though in a different context of construction of the words 'unauthorized use' and 'means', and has held in paragraph 23 as under :

23. Having dealt with the principle of interpretation of these provisions and the distinction between Sections 126 and 135 of the 2003 Act, we shall now discuss the ambit and scope of Section 126. The provisions of Section 126 contemplate the following steps to be taken :

(i) An assessing officer is to conduct inspection of a place or premises and the equipments, gadgets, machines, devices found connected or used in such place.

(ii) The formation of a conclusion that such person has indulged in unauthorized use of electricity.

(iii) The assessing officer to provisionally assess, to the best of his judgment, the electricity charges payable by such person.

(iv) The order of provisional assessment to be served upon the person concerned in the manner prescribed, giving - him an opportunity to file objections, if any, against the provisional assessment.

(v) The assessing officer has to afford a reasonable opportunity of being heard to such person **and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment.**

(vi) The person, upon whom the provisional order of assessment is served, is at liberty to pay the said amount within seven days of the receipt of such order and where he files such objections, final order of assessment shall be passed, against which such person has a right of appeal under Section 127 of the 2003 Act within the prescribed period of limitation.

(emphasis added)

17. In my view therefore, failure to pass final assessment order within a period of 30 days from the date of service of the

provisional assessment is fatal in the present case. The final assessment order deserves to be set aside on this solitary ground and has actually been set aside by the Appellate Authority on this ground. Since the final assessment order dated 6 April 2016 is rendered invalid on account of violation of provisions of Section 126(3) of the Act, it is not necessary to go into the rest of the reasonings adopted by the Appellate Authority. Therefore, the issue as to whether consumption of electricity for industrial purpose in respect of connection authorized for power-loom would amount to unauthorized use of electricity is kept open to be decided in an appropriate case.

18. I therefore, do not find any valid reason to interfere in the order passed by the Appellate Authority. Writ Petition must fail. It is accordingly **dismissed** without any order as to costs.

(SANDEEP V. MARNE, J.)

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