

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17120 OF 2024

FCA India Automobiles Private Limited

...Petitioner

Vs.

Maharashtra State Electricity Distribution
Co. Ltd. & Anr.

...Respondents

Mr. Bhushan Bhadgale with Mr. Akshay Patni, Mr. Chetan Alai and Ms.
Rama Somani for the Petitioner.
None for Respondents.

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

DATE: 06 FEBRUARY 2025

Oral Judgment (per G.S. Kulkarni, J.):

1. Rule, returnable forthwith. Respondents are served, but not represented.
2. By an order dated 17 December 2024 of the co-ordinate Bench of this Court, learned advocate for the petitioner was permitted to serve the respondents by private service. Accordingly, steps were taken by the petitioner to serve the respondents. Affidavit of service dated 28 January 2025 is placed on record. The respondents were also served by an email dated 05 February 2025, copy of which is also placed on record. Despite service, the respondents are not represented.

3. As a short issue arises for consideration, the petition is taken up for hearing.

4. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:-

“(a) That this Hon’ble Court may be pleased to issue a or Writ of Certiorari or Writ of Mandamus and/or any other Writ or Order or direction under Article 226 and 227 of the Constitution of India thereby to quash and set aside the impugned order dated 22.10.2024;

(b) That this Hon’ble Court may be pleased to issue a or Writ of Certiorari or Writ of Mandamus and/or any other Writ or Order or direction under Article 226 and 227 of the Constitution of India thereby to quash and set aside the impugned order dated 13.09.2024;

(c) That this Hon’ble Court may be pleased to stay the effect, operation, implementation, and execution of the order dated 13.09.2024 passed by the Respondent No.2.”

5. Thus, the challenge of the petitioner is to an order dated 22 October 2024 passed by the Appellate Authority and Chief Electricity Inspector, Department of Industries, Energy, Labour and Mines, Mumbai who dismissed the petitioner’s appeal filed under Section 127(1) of the Electricity Act, 2003 (for short, “**Electricity Act**”), on the ground that on scrutiny of the papers of the appeal, there were errors found and more particularly the appeal although was filed within the prescribed period, the deposit of 50% of the final assessment amount of Rs.2,20,30,450/- was not made, before the expiry of the prescribed period of limitation to file the

appeal. For such reason, the appeal was dismissed on the ground of non fulfilling of the terms and conditions under Section 127(2) of the Electricity Act.

6. It is urged on behalf of the petitioner that the prescribed limitation of 30 days to file an appeal under sub-section (1) of Section 127 was to expire on 13 October 2024. The appeal was filed on 11 October 2024 as also the amount was deposited on 14 October 2024 which is with a delay of one day.

7. The controversy in the present petition revolves around the implications which are brought about by the provisions of Sections 126 and 127 of the Electricity Act. The said provisions are required to be noted which read 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 unauthorised 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 unauthorised 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 rates 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 authorised.]

127. Appeal to appellate authority. - (1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months.”

(emphasis supplied)

8. On a plain reading of Section 126 of the Electricity Act, it is seen that it provides for “assessment”. Sub-section (3) thereof provides that the person, on whom an assessment 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 a 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. Sub-section (4) thereof provides that 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 ordered upon him. Sub-section (5) provides that if the assessing officer reaches to the conclusion that an 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, such period of unauthorised cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

9. Section 127 provides for “Appeal to Appellate Authority” which ordains that any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed. Sub-section (2) thereof provides that no appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal. Sub-section (3) provides that the appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant. Sub-section (4) provides that the

order of the appellate authority referred to in sub-section (1), passed under sub-section (3) shall be final. Sub-section (6) provides that when a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

10. Having noted the legislative scheme of the provisions of Section 126 read with Section 127, we are of the opinion that in the fact situation, this is not a case which was falling within the purview of sub-section (2), as it is clearly seen from the impugned order that the only infirmity which is stated is that the petitioner although had filed the appeal within the prescribed period of 30 days as provided for in sub-section (1) of Section 127, the deposit of 50% of the amount as per the requirement of sub-section (2) was made subsequent to the filing of the appeal.

11. In our opinion, on a bare perusal of sub-section (1) of Section 127, the limitation, which has been prescribed for a person aggrieved by the final order, to file an appeal which is of thirty days, cannot be *ipso facto* applied to the requirement of sub-section (2) namely of a deposit of 50% of the assessed amount, is prescribed. The reason being sub-section (2) itself provides that no appeal against the order of assessment filed under sub-section (1) “shall be entertained” unless 50% amount is deposited in cash or

by way of bank draft with the licensee and proof of such deposit has been enclosed along with the appeal. The words “has been enclosed along with the appeal” cannot be interpreted to mean that such amount is necessarily required to be deposited and the proof of the same is enclosed at the time of filing of the appeal. If the provision is read to mean that sub-section (2) provides that such amount is required to be deposited at the time of filing of the appeal and proof to be enclosed along with the appeal at the time of its filing, in our opinion, any delay (even a short delay) which may occur for a bonafide reason would result in the person aggrieved being rendered remediless and/or the appeal being required to be dismissed at the threshold, although it is filed within limitation. In our opinion, this cannot be the intention of the legislature. This is also discerned from the fact that sub-section (1) provides a limitation of 30 days for filing of the appeal, however, sub-section (2) is conspicuously silent on any specific limitation in regard to deposit of the amount. There cannot be an intermixing of the effect of provisions of sub-section (1) and sub-section (2) of Section 127, so as to read the period of limitation also to be applicable for a period of deposit. In other words, the stipulation that no appeal against an order of assessment under sub-section (1) “shall be entertained” in the context of sub-section (2), would mean that the appeal would not be adjudicated upon or proceeded to be considered on merits until such deposit as the

provision prescribes, is made. In **Hindustan Commercial Bank Ltd. vs. Punnu Sahu**¹, the word “entertained” as contained in proviso to clause (b) of Order 21 Rule 90 (as amended by Allahabad High Court) was subject matter of consideration. The amended proviso as considered by the Supreme Court which used the word “entertained” read to the effect “*provided that no application to set aside the sale shall be **entertained***”. In such context, the Supreme Court interpreted the expression “entertained” as appearing in the proviso, to mean, that the expression “entertained” would be required to be read as having a meaning to adjudicate upon or proceed to consider on merits being a settled position in law also considering the decision as referred in paragraph 4 of the said decision. The relevant extract of the decision is required to be noted which reads thus:-

“4. Before the High Court it was contended on behalf of the appellant and that contention was repeated in this Court, that clause (b) of the proviso did not govern the present proceedings as the application in question had been filed several months before that clause was added to the proviso. It is the contention of the appellant that the expression “entertain” found in the proviso refers to the initiation of the proceedings and not to the stage when the Court takes up the application for consideration. This contention was rejected by the High Court relying on the decision of that Court in *Kundan Lal v. Jagan Nath Sharma*, AIR 1962 All 547. The same view had been taken by the said High Court in *Dhoom Chand Jain v. Chamanlal Gupta*, AIR 1962 All 543 and *Haji Rahim Bux and Sons v. Firm Samiullah and Sons*, AIR 1963 All 320 and again in *Mahavir Singh v. Gauri Shankar*, AIR 1964 All 289. These decisions have interpreted the expression “entertain” as meaning “adjudicate upon” or “proceed to consider on merits”. This view of the High Court has been accepted as correct by this Court in *Lakshmiratan Engineering Works Ltd. v. Asst. Comm., Sates Tax, Kanpur*, AIR 1968 SC 488. We are bound by that

1 (1971) 3 SCC 124

decision and as such we are unable to accept the contention of the appellant that clause (b) of the proviso did not apply to the present proceedings.”

(emphasis supplied)

12. Thus necessarily sub-section (2) of Section 127 when uses the word “entertained”, it would mean that the appeal would not be taken up for hearing on merits, provided the compliance of deposit as per the requirement of sub-section (2) which may be even a belated deposit, is made. Unless such deposit is made, the appellate authority would not have jurisdiction to proceed and decide the appeal, is the necessary fall out of sub-section (2). Any other interpretation of a conjoint reading of sub-section (1) and sub-section (2) of Section 127, in our opinion, would result in harsh consequences to the person aggrieved, so as to result in even a small delay, in the deposit of the amount sufficient to non-suit the aggrieved person, who would be deprived of a remedy of an appeal, which the law would provide under Section 127. The provision is thus, required to be interpreted so as to render it meaningful and entail the same to the benefit of the person aggrieved, and not to destroy a right of appeal on such technical considerations when the other requirements are satisfied. Thus, what is applicable are the norms of purposive interpretation of the statutory provisions when we interpret this provision in the present context. We are thus of the clear opinion that the view taken by the appellate authority in the impugned order, is certainly not correct. It is too much of a mechanical

approach on the part of the appellate authority.

13. We have been informed that 50% amount was deposited by the petitioner with the appellate authority on 14 October 2024, which is with a delay of about one day from the date of filing of the appeal, and the balance 50% amount was deposited with respondent No.1 on 19 November 2024.

14. In this view of the matter, we are of the opinion that the impugned order dated 22 October 2024 is required to be quashed and set aside and the appeal of the petitioner be restored before the appellate authority, to be heard on merits. Ordered accordingly.

15. The petition is allowed in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)