

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1026 OF 2025

Suresh Dhondu Bagul & Anr. ...Petitioners
Versus
Deputy Executive Engineer
Maharashtra State Electricity Distribution Co. Ltd.
& Ors. ...Respondents

Ms. Gulnar Mistry a/w Ms. Komal Shah for Petitioners.
Mr. Sumedh Palsuledesai i/b M.V. Kini & Co. for Respondent Nos.1, 2 and 3.
Mr. Ketan Joshi 'B' Panel Advocate for Respondent-State-4

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

DATE : 3 FEBRUARY 2025

Oral Judgment (Per. Advait M. Sethna., J) :

1. This is a writ petition under Article 226 of the Constitution of India, praying for the following substantive reliefs :-

- (a) This Hon'ble Court be pleased to issue a Writ of Certiorari and / or any other appropriate writ, order, direction in the nature of Certiorari, thereby calling for the records culminating into the Impugned Order dated 09.02.2024, issued by Respondent No. 1 (at Exhibit "A" hereto), and after examining the legality, validity and propriety thereof, be pleased to quash and set aside the same;
- (b) This Hon'ble Court be pleased to issue a Writ of Mandamus and/or any other appropriate writ, order, direction in the nature of Mandamus, thereby directing the Respondents to restore the electricity connection in the premises of Petitioner No.1 situated at House No. 5/117/1, At post Wada, District Palghar, Maharashtra, 421303. which was illegally disconnected by Respondent No. 1.

(c) This Hon'ble Court be pleased to issue a Writ of Mandamus and / or any other appropriate writ, order, direction in the nature of Mandamus, thereby directing the Respondents to pass the final assessment order under the Section 126(3) of the Electricity Act, 2003 or, if the final assessment order has been passed, directing the Respondents to furnish a copy of the final assessment order upon the Petitioners in accordance with Section 171 of Electricity Act, 2003;

2. Petitioner No.1 is an individual, a senior citizen and widower, who is a consumer of the Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL), using the electricity from the meter no.050511009691, installed at his residential premises, as set out in the cause title of the petition.

3. Petitioner no.1 is primarily aggrieved by an order dated 9 January 2024, passed by Respondent No.1, i.e. Deputy Ex. Engineer, MSEDCL, Wada Division. By the said order, petitioner no.1 was directed to pay an amount of Rs.53,730/-, as provisionally assessed by respondent No.1, within 7 days of the impugned order which was passed under the provisions of Section 126 of the Electricity Act, 2003 (“**the Electricity Act**” for short). The petitioner no.1 was *prima facie* found to be the unauthorized user of electricity by respondent no.1. The breakup of the said amount of Rs.53730/-, provisionally assessed under the said order and found along with the said order in a tabulated form.

4. The impugned order reads thus :-

“Dear Sir/madam,

On inspection of the above referred electricity connection, it was observed that the connection was being used unauthorial as pointed as above.

The above is prima facie indicative of Unauthorized Use of Energy ("UUE") under Section 126 of the Electricity Act, 2003.

.. In line with the. Tariff Order and the Electricity Act, 2003 & Amendment Act 2007 this provisional assessment order is issued calling upon you to pay the amount of Rs.53,730/- (Fifty three thousand seven hundred thirty rupees Only) as per this provisional assessment within 7 Days from the date of this order. An opportunity for personal hearing on date 13.02.2024 & time 15:30 hrs, At MSEDCL Office Wada Sub Divisional At Wada in front of Rathod Hospital Assessing Officer is given to your oral/written representation in the case of your disagreement with this order. The working of the provisional assessment amount is enclosed herewith...

1) The Spot Inspection Report prepared at sire, was refused to be accepted by you/your representative...

OR

7) The same were pasted at your premises and photographs thereof have been taken.

OR

3) Action at para above was not permitted. This the notice is being sent herewith through Registered post.

DY Ex Engineer SEDECWADA DIVISION"

5. Ms. Gulnar Mistry, learned counsel for petitioner no.1, would submit that the impugned order has caused irreparable harm to the petitioner no.1, who is a poor person with limited means, besides being a senior citizen and a widower. She would submit that the impugned order of provisional assessment issued under Section 126 of the Electricity Act,

has been passed without any basis whatsoever. According to her, there is no notice issued, as provided under Section 56 of the Electricity Act, which further renders the impugned order illegal.

6. According to Ms. Mistry, the impugned order entails serious civil consequences of disconnection of the petitioner's electricity connection, that too without a prior notice of such disconnection as provided under section 56(1) of the Electricity Act, causing grave prejudice to petitioner no.1. She would submit that such action of respondent no.1 is not only contrary to the provisions of the Electricity Act, but also violates petitioner no.1's fundamental rights under article 19(a)(b) read with the constitutional right to property guaranteed under Article 300A of the Constitution of India.

7. We have heard learned counsel for the parties and with their assistance, perused the record. We have also perused the impugned order dated 9 February 2024 passed by respondent no.1.

8. After hearing the learned counsel for sometime, in our view, it is evident that the impugned order is in the nature of provisional assessment order, pending finalization. Such fact is neither disputed nor controverted by respondent no.1. We may at this juncture refer to the provisions of section 126 of the Electricity Act, which reads thus :-

Section 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 judgement 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 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 authorized.”]*

9. From a perusal of the said provision, we find that in the present case, the assessment of the amount of electricity charges due and payable by petitioner no.1 is pending finalization. In this regard, section 126(3) categorically provides for affording a reasonable opportunity of hearing the person concerned and subsequent thereto, passing the final order of assessment, within a period of 30 days as stipulated under the said provision.

10. At this stage, Ms. Mistry after taking instructions, would submit that her client would deposit of Rs.25,000/- on a without prejudice basis with respondent no.1, who would after hearing petitioner no.1 pass appropriate order to finalize the assessment in accordance with law and the provisions of section 126 of the Electricity Act.

11. Considering the factual complexion of the present case as also that petitioner no.1 is a senior citizen and a person with limited means, as stated by Ms. Mistry, in our view, the following order would meet the ends of justice.

: O R D E R :

- (i) Respondent No.1 is directed to finalize the assessment within a period of four weeks from the

date of this order is made available to respondent no.1, after hearing the parties, as stipulated under section 126 of the Electricity Act and in accordance with law.

- (ii) Petitioner no.1 shall deposit a sum of Rs.25,000/- with Respondent No.1 within a period of two days from the date of this order is made available. Subject to such compliance the electric connection of petitioner no.1, which is disconnected shall be restored. Needless to state that such deposit is without prejudice to the rights and contentions of petitioner no.1, before the said respondent no.1 for finalizing the assessment.
- (v) All contentions of the parties are expressly kept open. We make it clear that we have not make any observations on the merits of the matter.
- (vi) Petition is disposed of in the above terms.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]