



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2423 OF 2019

PETITIONER

DR.PANJABRAO DESHMUKH KRISHI VIDYAPEETH,AN AGRICULTURE UNIVERSITY established under the Act 1968 and currently governed by the provisions of Maharashtra Agriculture administrative building P.K.V campus Akola, Tq and Dist Akola,through its university engineer Shri Ramdas Pandurang Khodkumbhe.

...VERSUS...

RESPONDENTS

1. CHIEF ELECTRICAL INSPECTOR, 3rd Floor, Administrative Building, PWD Compound, Ramkrishna ChemburkarMarg, Chumbur East, Mumbai-400071
2. SUPERINTENDING ENGINEER, O and M Circle,MSEDCL,Ratanlal Plots,Akola,Tq and Dist Akola.

Mr. A.R. Deshpande, Advocate for Petitioner.

Mr. P.V. Bawankule a/w. Mr. S.V. Purohit, Advocate for Respondent No.2.

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 11/11/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the respective parties at the stage of admission.

2. The present petition is directed against the order dated 16.03.2019 passed by the respondent No.1, whereby, the respondent No.1 rejected the application for condonation of delay in filing the appeal by the petitioner under Section 127 of the Electricity Act, 2003 (for short “Act, 2003”).

3. Learned counsel for the petitioner invited my attention to order passed by the learned Appellate Authority i.e. respondent No.1 and pointed out that the delay application was rejected solely on the ground that the petitioner has not explained the delay properly. In support of his contention, he relied upon the judgment of this Court in the case of *Rakhee Gupta Vs. State of Maharashtra and Others* reported in *2017(1) Mh.L.J. 268 dated 18.10.2016* and also the order passed by this Court in Civil Writ Petition No.13335/2017. He invited my attention to para No.14 of the Rakhi Gupta’s case (supra) and pointed out that this Court has already considered the issue condoning the delay in filing appeal under Section 127 of the Electricity Act, 2003 (for short “the Act, 2003”). He further submits that in view of the above mentioned judgment, the order passed by the learned Appellate Court is liable to be set-aside. He further submits that the petitioner being a University the delay ought to have been condoned by the Appellate Authority.

4. Per contra, learned counsel for the respondent No.2 placed on record the copy of the judgment delivered by the Division Bench of the High Court of Calcutta in the case of ***Sudipta Koley Vs. Smt. M. Bhowmick and Another*** in ***Writ Petition No.84/2019 dated 10.07.2019***, wherein, a reference made to the Rakhee Gupta's case (supra) was also considered by the Division Bench and invited my attention to para No.35 to 41, which are reproduced as follows :-

“35. Finally, advertng to section 127, we find that an appeal has to be filed within 30 (thirty) days. Neither does section 127 enlarge the period of limitation, as in section 125, nor does it confer power on the appellate authority, in similar vein as in section 111, to condone the delay in preferring an appeal (irrespective of the length of delay but subject of course to satisfaction that the appellant was prevented by sufficient cause from preferring the appeal earlier). The concept of condonation of delay is completely absent insofar as section 127 is concerned.

36. Section 181(1) of the 2003 Act confers power on the State Commissions to frame regulations, not inconsistent with the provisions of the 2003 Act and the rules, to carry out the provisions of such Act subject also to the condition of a prior notification. Sub-section (2) of section 181 lists the matters in respect whereof regulations could be made by the State Commissions. Clause (zo) permits regulations to be brought into existence in respect of the form of preferring the appeal, the manner in which such form shall be verified and the fee for preferring the appeal under sub-section (1) of section 127.

37. We have been shown the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013. Paragraphs 3.1.1 and 3.1.2 under Chapter III of such Regulations refers to matters as in clause (zo) of section 181(2). The Regulations also do not speak of power being conferred on an appellate authority exercising jurisdiction under section 127 to condone the delay in preferring an appeal, assuming that the State Commission has the power to so confer.

38. Chhatisgarh State Electricity Board (*supra*) is an authority for the proposition that the 2003 Act is a self-contained comprehensive legislation. Having read the provisions of the 2003 Act, to the extent relevant, and discussed the same in some detail, we are clear in our mind about the legislative intent that (i) section 5 of the 1963 Act in terms does not apply to an appeal under section 111 of the 2003 Act, although the principles underlying section 5 are applicable to such appeal; (ii) section 5 in terms does not have any applicability in respect of an appeal under section 125 of the 2003 Act, although the principles of section 5 could apply in an appropriate case where an appeal thereunder is preferred between 1 [Sixty-one] and 120. (one hundred twenty) days of communication of the decision or order to the appellant and he seeks condonation of delay showing sufficient cause; (iii) neither the terms of nor the principles underlying section & have any application in respect of an appeal under section 127 thereof. We also hasten to add that the fact of the 2003 Act not expressly excluding the provisions of the 1963. Act is of no relevance. If in the same Act, i.e. the 2003 Act, the legislature has consciously and expressly made provision for application of section 5 principles (section 111 and 125) and such a provision is not made for an appeal under section 127, it necessarily follows that the legislature did not intend to give such benefit in respect of an appeal under section 127. We hold so on the basis of the dicta of the Supreme Court decision reported in (2004) 4 SCC 252 [*Gopal Sardar v. Kazuna Sardar*].

39. in view of such discussion, we are unable to hold that a time-barred appeal under section 127 of the 2003 Act may be considered on merit by the appellate authority upon condonation of delay. The appellate authority has not been empowered to condone delay, as is the case of an appeal under section 111.

40. The off-shoot of the aforesaid conclusion is that the decisions of learned Single Judges of this Court in *Omevati Devi Agarwal* (*supra*) and *Shree Gopal Engineering Works Limited* (*supra*) do not lay down good law. We concur with the opinions expressed by coordinate Benches of this Court in *Kalavanti Doshi Trust* (*supra*) and *Pranab Kumar Sarkar* (*supra*) that delay in preferring an appeal under section 127 of the 2003 Act cannot be condoned by the appellate authority since it is not empowered to do so. We, however, wish to deal with a particular observation in *Kalavanti Doshi Trust* (*supra*) before concluding our judgment.

41. We now answer the questions formulated by the learned Judge in chronological order:

Answer to question 1: The language of the particular section has to be seen in juxtaposition to the language in which the other sections are couched. The language of section 125 permits condonation of delay beyond 60 (sixty) days but limited to 120 (one hundred twenty) days' delay, whereas section 127 does not permit condonation of delay at all. The proviso to section 125 cannot be read in a manner so as to clothe an appellate authority under section 127 to condone the delay. The result arising out of preferring an appeal under section 125 beyond 120 (one hundred twenty) days and under section 127 beyond 30 (thirty) days would be similar, i.e., the delay cannot be condoned. Answer to question 2: It is true that Chhatisgarh State Electricity Board (supra) arose out of an appeal under section 125 whereas Kalavanti Doshi Trust (supra) involved interpretation of section 127. The factual dissimilarities notwithstanding, there would be no change in the result in view of our answer to the preceding question.

Answer to question 3: In Mukri Gopalan (supra), the Supreme Court held that the appellate authority under section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 was not a persona designata but it was functioning as a court and hence section 5 was automatically applicable. Collector, Land Acquisition, Anantnag (supra) was a civil appeal arising out of a judgment and order passed by the relevant high court, to which section 5 of the 1963 Act did apply. The appellate authority under section 127 not being a 'court', the referred decisions cannot be called in aid in the context of section 127. That apart, Mukri Gopalan (supra) has been held not to lay down good law by the Supreme Court in its decision reported in (2015) 7 SCC 58 [M.P. Steel Corporation v. Commissioner of Central Excise] and then again in Ganesan (supra). Answer to question 4: Popular Construction (supra) involved interpretation of section 34 of the Arbitration and Conciliation Act, 1996. The provision prescribing the period of limitation resembles the provision in section 125. Popular Construction (supra) and Chhatisgarh State Electricity Board (supra) have read pari materia provisions in sync with each other. However, the law that applies to section 125 per se is not applicable to section 127. Popular Construction (supra), therefore, has no application here.

Answer to question 5: The provisions of the 1963 Act need not have been expressly excluded by the legislature in its application to the 2003 Act, for the reasons discussed above. The conclusion in paragraph 38 provides a complete answer to this question and hence we refrain from repeating the same.

Answer to question 6: Although section 17 of the SARFAESI Act, 2002 refers to an appeal, the learned Judge is right in observing that the proceeding thereunder is to be treated as a suit, as held by the Supreme Court in its decision reported in (2004) 4 SCC 311 [Mardia Chemicals & ors. v. Union of India & ors.]. However, a proceeding under section 17 of the SARFAESI Act, 2002 being a suit, it is not akin to a proceeding under section 127 of the 2003 Act which is an appeal conferring a statutory right to challenge an order of assessment made under section 126.”

Wherein it is held that a time barred appeal under Section 127 of the Act, 2003, can not be considered on merit.

5. Reliance has been placed on the order passed by the Division Bench of this Court in the case of ***Saharsh Daga Vs. The State of Maharashtra and Others*** in ***Writ Petition No.2453/2015*** and specifically relied upon para 4, which reads as follows :-

“4] The only contention therefore surviving for our consideration is whether the view taken by the Appellate Authority that it has no power to condone the delay in filing the appeal is correct, legal and proper. Fortunately for us, we are spared of this exercise because the learned Single Judge (His Lordship the Hon'ble Mr. Justice R. M. Savant) held that such a view of the Appellate Authority is erroneous and illegal. The Authority has a power to condone the delay. The only requirement is that the applicant seeking to condone the delay must make an application in writing setting out sufficient cause for the delay. It is for the Appellate Authority to consider that cause and if it is sufficient and reasonable the delay would be condoned and not otherwise.”

The Division Bench of this Court in paragraph 5 requested learned counsel for the BEST to take instructions whether view taken by the learned Single Judge has accepted by the BEST or not. On that

learned counsel represented the BEST submitted that BEST has accepted the same. The para No.5 of the judgment is reproduced as follows :-

“5] On the earlier occasion, we requested Ms Anchan appearing for the BEST to take instructions as to whether the BEST accepts the view taken by the learned Single Judge and referred above, or whether it is disagreeing with it and therefore has brought proceedings to challenge it in a higher court. She sought time yesterday to take instructions. At her request, the matter was placed today. Today, on instructions Ms Anchan says that the BEST has accepted the view taken by the learned Single Judge and would proceed to abide by it. Such a statement made on instructions is accepted as an undertaking to this Court.”

More particularly in para 6 of the said order Division Bench has observed that :-

“6] We therefore do not decide any larger issue or wider controversy. The order of the Appellate Authority to the extent it holds that it has no power to condone the delay in filing appeal is quashed and set aside. The petitioner applicant / appellant will now make an application requesting the Appellate Authority to condone the delay and which application shall set out the sufficient cause for not bringing the appeal in time.”

Therefore, to decide the larger issue involved in the controversy the judgment of the Division Bench of this Court in Saharsh Daga’s case (supra) is not applicable to the present petition.

6. It is appropriate to refer to Section 127 of the Act, 2003 for ready reference which is reproduced as follows :-

“(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.

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(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."

7. I have gone through the above referred judgments and in view of the fact that the Division Bench of Calcutta High Court has considered that for preferring an appeal under Section 127 of the Act, 2003, the period of limitation of 30 days is provided, therefore, in any case, the delay cannot be condoned as the statutes itself provides the period of limitation specifically.

8. Therefore, no application for condonation of delay can be considered under Section 127 of the Act, 2003. Therefore, I am adopting the law laid down by the Division Bench of the Calcutta High Court in Sudipta Koley's case (supra). Hence, I pass the following Order :-

ORDER

- A) The Writ Petition No.2423/2019 is hereby **dismissed**.
B) Interim order dated 27.03.2019 shall continue for a period of six weeks from today.

Rule is discharged in above terms.

(SIDDHESHWAR S. THOMBRE, J.)