

Bombay High Court

District Gondia (Maharashtra vs Maharashtra State Electricity on 18 July, 2011

Bench: R. M. Savant

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3087 OF 2011

Alka w/o Ravi Agrawal, aged

about 50 years, occupation :  
business, r/o Ashirwad Rice Mill,

Nangpura (Murri), Tahsil and  
District Gondia (Maharashtra),  
through her Power of Attorney Holder

Padam s/o Triveniprasad Agrawal,  
aged about 36 years, occupation :  
business, r/o Ashirwad Rice Mill,  
Nangpura (Murri), Tahsil and

District Gondia (Maharashtra). ... Petitioner

- Versus -

1) Maharashtra State Electricity  
Board, through Executive Engineer,

MSEB, O&M Division, Ramnagar,  
Gondia, District Gondia.

- 2) The Assessment Officer,  
Designated under Electricity

Act 2003, Deputy Executive  
Engineer (Flying Squad), MSEB,  
O&M Division, Ramnagar, Gondia,  
District Gondia.

- 3) Superintending Engineer,  
(The Appellate Authority u/s  
127 of the Act), Nagpur Region,

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Electrical Inspection Circle,

Industries, Energy and Labour  
Department, B.No. 39.1, Civil

Lines, Nagpur - 440 001. ...

Respondents

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Shri V.R. Mundra, Advocate for the petitioner.

Shri R.E. Moharir, Advocate for the respondent nos. 1  
and 2.

Shri A.D. Sonak, Assistant Government Pleader for the

respondent no.3. ig-----

CORAM : R.M. SAVANT, J.

DATED : JULY 18, 2011 ORAL JUDGMENT :

Rule, with the consent of the learned Counsel for the parties made returnable forthwith and heard.

2) The above petition takes exception to the order dated 7/3/2011 passed by the Superintending Engineer, Nagpur Region, Electrical Inspection Circle, Nagpur whereby the Appeal filed by the petitioner herein came to be rejected.

3) The allegation against the petitioner, who is a consumer of the respondent no.1, is about the theft of electricity between the period 22/8/2003 and 21/8/2004, on the basis of inspection made by the Flying Squad, an assessment was made in the sum of Rs.3,26,712/-. The said assessment finds place in the final assessment made under Section 126 of the Electricity Act, 2003 as contained in the order dated 28/11/2005. Aggrieved by the said order dated 28/11/2005, the petitioner filed an Appeal on 13/7/2010 on the ground that the said order dated 28/11/2005 was received on 30/6/2010. It is the case of the petitioner that she also deposited 33% of the final assessment at the time of filing the Appeal. The Appeal has been rejected on twin grounds, namely, that it is time barred as Appeal under Section 127 of the said Act is required to be filed within one month of the receipt of the order and the second ground was that the petitioner had not deposited 50% amount with the Supplier Company.

4) The principal ground on which the said order dated 7/3/2011 is challenged by the petitioner is that the Officer, who had passed the said order, had not heard the petitioner and it is his predecessor, who had heard the petitioner, however, the impugned order has been passed by the successor Superintending Engineer, who has signed the order.

ig The said contention is not seriously disputed by the learned Counsel Shri Moharir appearing for the respondent nos. 1 and 2. However, Shri Moharir contends that in view of the prosecution launched against the petitioner by taking recourse to Sections 135 and 138 of the said Act, the petitioner would be bound by the orders passed in the said proceedings.

5) Upon this, learned Counsel for the petitioner drew my attention to the judgment dated 4/5/2007 delivered by a Division Bench of this Court in a group of writ petitions being Writ Petition No. 2821/2006 and companion petitions between Maharashtra State Electricity Distribution Company Limited and The Chief Engineer (Electrical) and others. Paragraph (16) of the said judgment is relevant, which is reproduced hereunder :

"16. It, therefore, follows that provisions of Clause 31(e) were and are not available after 10/6/2003

and there can be no interlocutory or interim/ provisional assessment in matter of theft as neither Section 135 nor Section 138 or entire scheme of 2003 Act permit it. Reliance upon provisions of Regulations 8.5 or 8.6 in cases where cause of action accrued after 20/1/2005 by Advocate Deshpande is again misconceived in view of this position. Section 138 in fact only makes act of interference with meters or works of licensee an offence and its purpose or interpretation is on same lines as pointed out with reference to Section 135 above inasmuch as said offence must first be established before Special Court and Consumer must be convicted by such Special Court for offence under Section 135 or 138 of 2003 Act. All assessments made by Maharashtra State Electricity Distribution Company Ltd. after 10/6/2003 are only under and are possible only under Section 126 when it is in matter of "unauthorised" use of electricity" which also contemplates within its sweep alleged theft. Hence, Appeals under such assessment before Appellate Authority under Section 127 of 2003 Act are very much maintainable."

The Division Bench has, therefore, held that under Section 126, unauthorized use of electricity would take within its sweep even theft of electricity and, therefore, an Appeal is maintainable.

6) In my view, the present petition would have to be allowed only on the short ground that the Officer, who did not hear the matter, could not have passed the impugned order dated 7/3/2011. It is for the respondent no.3, i.e. the present incumbent Superintending Engineer to deal with the matter after affording an opportunity of hearing to all the parties.

It is made clear that the respondent no.3 would take into consideration the fact that the petitioner is also facing prosecution under Sections 135 and 138 of the said Act. On such remand, the respondent no.3 to hear and decide the said Appeal filed by the petitioner within two months from date. The parties to appear before the respondent no.3 Superintending Engineer on 8/8/2011.

7) Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

JUDGE khj