

SUPREME COURT OF INDIA

Maharashtra State Electricity Distribution Co.Ltd.

Vs.

The Appellate Authority

C.A.No.3370 of 2007

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

15.02.2018

JUDGMENT

Abhay Manohar Sapre,J.,

1. These appeals are directed against the common final judgment and order dated 04.05.2007 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition Nos.5858 of 2005, 2821, 2705, 2706/2006, 6219/2005, 721/2006, 3737/2005, 3935/2005, 1386, 1389, 1586 & 2060/2006 whereby the High Court dismissed the writ petitions filed by the appellant herein and partly allowed the writ petitions filed by respondent-Consumer.

2. The controversy involved in these appeals is short as it would be clear from the facts mentioned hereinbelow.

3. For the sake of convenience, the facts pertaining to C.A. No.3370 of 2007 were taken into account. Respondent No. 2 is running Oil Mill having cotton seeds crushing activity at Akola (Maharashtra). They are consumers of electricity, which is supplied to them by the State Electricity Board - the appellant herein (hereinafter referred to as "the Board")

4. On 17.03.2003, the sleuths of the Board visited respondent No.2's factory and replaced Meter No.356, installed in the factory with a new Meter bearing No. MSE 04821. On 02.08.2003, the sleuths again visited the factory and on inspection found some tampering with the Meter seals. This led to making of provisional assessment by the appellant under Section 126 of the Electricity Act, 2003 (for short "the Act") for the unauthorized use of electricity. The Board accordingly sent a provisional bill to respondent No.2 followed by revised provisional bill dated 16.08.2003 for Rs.21,38,660/-.

5. Respondent No.2, felt aggrieved, filed a writ petition and questioned the legality and correctness of the provisional bill. During the pendency of the writ petition, the final assessment order was issued to respondent No.2 on 24.11.2003. However, the High Court quashed and set aside that order and remanded the matter to the Authority for giving an

opportunity to respondent No.2 while passing the final order. It was done and accordingly final order dated 29-30.04.2004 demanding a sum of Rs.62,52,632/- was passed by the Authority against respondent No.2.

6. The aforesaid order was challenged by respondent No.2 under Section 127 of the Act before the Appellate Authority. The Appellate Authority by order dated 15.04.2005 disposed of the appeal giving rise to filing of the writ petition by the Board as also by the consumer (respondent No.2) in the High Court of Bombay, Nagpur Bench. The other similarly situated consumers also filed writ petitions before the High Court.

7. By impugned common judgment, the High Court dismissed the writ petitions filed by the Board whereas partly allowed the writ petitions filed by the consumers. While setting aside the Appellate Order, the High Court remanded the case to the Assessing Authority and directed the parties to abide by the provisions of Section 126/127 of the Act.

8. It is against this judgment, the Board alone has felt aggrieved and filed these appeals by way of special leave in this Court.

9. Heard Mr. A.S. Bhasme, learned counsel for the appellant and Ms. V. Mohana, learned senior counsel for the respondents.

10. Having heard learned counsel for the parties and on perusal of the record of the case, we do not consider it necessary to examine the legal questions which, according to the learned counsel for the Board, arise in these appeals and leave them open for being decided in appropriate case, if they really arise and found necessary to decide the lis.

11. Leave aside the legal questions, we find otherwise no reason to interfere in the impugned judgment of the High Court which, in our opinion, is sustainable on facts.

12. Suffice it to say, the High Court while allowing the consumers' writ petitions and, in consequence, setting aside of the Appellate Order passed under Section 127 of the Act by the Appellate Authority rightly remanded the case to the Assessing Authority for making provisional assessment under Section 126 of the Act and then to take recourse under Section 127 of the Act for filing appeal, if need arises. We do not find any reason to disturb these directions which, in our opinion, are in conformity with the scheme of the Act.

13. So far as the applicability of the provisions of the new Electricity Act, 2003 to the case at hand is concerned, though some doubts were raised about its applicability but, in our opinion, it has no substance. In our opinion, the Act 2003 does apply to the facts of this case because the Act 2003 came into force on 10.06.2003 whereas the inspection of the Meter installed in respondent No.2's factory premises was made by the sleuths of the Board on 02.08.2003.

14. It is, therefore, clear that the Board made an inspection of the Meter after the Act 2003 came into force. The cause of action, therefore, accrued to the Board after the Act 2003 came

into force and, therefore, the case of respondent No.2 was required to be dealt with in accordance with the procedure prescribed under the Act of 2003.

15. Since the action was taken by the Board against respondent No.2 (consumer) under Section 126 of the Act by raising the provisional/final bill and, therefore, respondent No.2 was well within their right to file an appeal against such demand under Section 127 of the Act before the Appellate Authority.

16. We cannot, therefore, accept the submission of the learned counsel for the Board that respondent No.2 had no right of appeal under Section 127 of the Act to challenge the order/demand raised under Section 126 of the Act. In other words, respondent No.2 had right of appeal under Section 127 of the Act to challenge the order passed under Section 126 of the Act.

17. Indeed, once the Act is held applicable to the controversy in question, a fortiori, all the provisions of the Act would then be applicable to the case which would obviously include a provision which provides a right of appeal to the Appellate Authority.

18. In the scheme of the Act, we find that Section 126 of the Act deals with assessment of electricity charges payable by such person (consumer) for unauthorized use of electricity whereas Section 135 deals with the cases of theft of electricity.

19. In other words, once the Board detects the case of unauthorized use of electricity by any consumer, in such event, the Board gets a cause of action to proceed against such person/consumer under Section 126 or/and 135 under the Act. Both Sections 126 and 135 are independent in all respects and provide different kind of liability and consequences. One involves monetary liability (Section 126) whereas the other involves criminal liability (Section 135).

20. The Board is, therefore, at liberty to take recourse to the provisions of Section 126 or/and 135 of the Act against such person/consumer as provided therein in accordance with law.

21. In these circumstances, if the Board initiates any action against any person/consumer, then such action must be brought to its logical end in accordance with the procedure prescribed under the Act after affording an opportunity to such person /consumer.

22. In view of the foregoing discussion and subject to the observations, we find no merit in the appeals, which fail and are accordingly dismissed.

23. As a consequence to the dismissal of the appeals, the authorities are directed to comply with the directions of the High Court and pass consequential order under Section 126 of the Act in accordance with law in the case of consumers (respondents) within three months from the date of this order.

